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TRANSCRIPT OF RECORD

(Pages 1 to 402)

Supreme Court of the United States

OCTOBER TERM, 1954

No. 357

CIRACO MANEJA, ANTONE VIERRA, TADAO WATANABE, ET AL., PETITIONERS,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED PETITIONER,

vs.

CIRACO MANEJA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1954

CERTIORARI GRANTED NOVEMBER 8, 1954

No. 13114

United States
Court of Appeals
For the Ninth Circuit.

WAIALUA AGRICULTURAL COMPANY, LIMITED, a Corporation,

Appellant,

vs.

CIRACO MANEJA, et al.,

Appellees.

Transcript of Record
In Two Volumes
Volume I
(Pages 1 to 402)

Appeal from the United States District Court for the District of Hawaii.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States
for the District of Hawaii

Civil No. 787

WAIALUA AGRICULTURAL COMPANY, LIMITED,

Plaintiff,

vs.

CIRACO MANEJA, ANTONE VIERRA, AUGUSTINE LORENZO, HARU KIBOTA, TADAO WATANABE, KOICHI OKOUCHI, TSURUO HAYASHI, CORNELIO ASUNCION, ROQUE CRISOSTOMO, PETER HOLMBERG, HATSUSUKE SERA, TAKUMI OKOUCHI, PEDRO DUMLAO, BERNABE HERNANDEZ, DOMINGO GUIGUI, USHINOSUKE KONDO, TERUICHI KUBO, MASAIKI OATO, SIMON CUMLAT, APOLONIO LAZO, GIICHI HAMAMOTO, DIONICIO CARRIT, SERAPHINE ROBELLO, TOSHIO TANAKA, BARNEY FARIA, FUMIO SUNAHARA, HIROSAKU TAKATA, ALFRED REYHER, MASARU EZAWA, DAMASO CLAUNAN, ANTONE ROBELLO, YOSHIJI YAMADA, EDWIN MORI, GENJIRO HIRONAKA, JIRO SAKAI, MARGARET FUJIWARA, LOUIS PACHECO, YUKISHIGE TSUTSUI, YACK CHUN LEE, EIKO SAKAGUCHI, MOSES FERNANDEZ, AND TOSHIO KASHIWABARA,

Defendants.

ORDER TO DROP CERTAIN PARTIES DEFENDANT

Upon motion of the plaintiff, pursuant to Rule 21 of the Rules of Civil Procedure, which motion was consented to by the defendants, and it appearing to be just and reasonable to the Court, it is ordered that Takeo Miyazaki, Cerilo Lendio, Domingo Menor, Kiichi Yamada, Manuel Damas and Keichi Kamiyama be dropped as parties defendant to this action.

Dated Honolulu, T. H., this 21st day of August, 1950.

/s/ D. E. METZGER,

Judge of the United States District Court for the District of Hawaii.

[Endorsed]: Filed August 21, 1950. [3*]

[Title of District Court and Cause.]

ORDER TO DROP CERTAIN PARTIES DEFENDANT AND TO ELIMINATE CLASS REPRESENTATION ASPECTS

Upon motion of plaintiff, which motion was consented to by the defendant, and it appearing to be just and reasonable to the Court—

It Is Ordered that, pursuant to Rule 21 of the Federal Rules of Civil Procedure, Local 145-7 of the International Longshoremen's and Warehouse-

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

men's Union, and Jack Hall, Regional Director, Territory of Hawaii, of the International Longshoremen's and Warehousemen's Union, be dropped as parties defendant to this action; [5]

It Is Further Ordered that all class representation aspects of this action be eliminated and that the presently remaining parties defendant in this action be sued in their individual capacities only and not as representatives of othe. employees of plaintiff who are similarly situated.

Dated Honolulu, T. H., this 21st day of August, 1950.

/s/ D. E. METZGER,

Judge of the United States District Court for the District of Hawaii.

[Endorsed]: Filed August 21, 1950. [6]

[Title of District Court and Cause.]

ORDER SETTING ASIDE PRIOR ORDER GRANTING SEPARATE TRIAL OF CERTAIN ISSUES

The order of this Court filed March 22, 1948, directing a separate trial of certain issues in this action is hereby vacated and set aside.

It is further ordered that all claims and issues presented in this action shall be heard and tried jointly.

Dated Honolulu, T. H., this 21st day of August, 1950.

/s/ D. E. METZGER,

Judge of the United States District Court for the District of Hawaii.

[Endorsed]: Filed August 21, 1950. [8]

[Title of District Court and Cause.]

AMENDED COMPLAINT

I.

Allegations of Jurisdiction

The Complaint filed in this action on April 9, 1947, and as subsequently amended on July 18, 1947, is hereby amended to read as follows:

1. This action arises under the Fair Labor Standards Act of 1938 (the Act of June 25, 1938, 52 Stat. 1060, 29 U.S.C. Sections 201 et seq.) hereinafter sometimes called the "Act," which is a law regulating commerce, and is brought to secure a declaratory judgment. This court has jurisdiction pursuant to Section 24 of the Judicial Code as amended, 28 U.S.C. Section 1337 and pursuant to Section 274d of the Judicial Code, 28 U.S.C. Section 2201. [10]

II.

Parties and Nature of Action

2. Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Ter-

ritory of Hawaii, with its head office located in the City and County of Honolulu, Territory of Hawaii, and with a plantation, where it produces sugar cane, processes it into raw sugar and conducts related operations, located in the District of Waialua, City and County of Honolulu, Teritory of Hawaii.

3. All defendants are employees of Plaintiff who were engaged in performing work on or about the Plaintiff's plantation during the period of time from November 20, 1946, to September 14, 1947, both dates inclusive.

III.

Plaintiff's Operations and Duties of Defendants

4. Since the incorporation of Plaintiff in 1898, it has been engaged almost exclusively in the growing, cultivating and harvesting of sugar cane on land owned or leased by it, and the processing of such sugar cane into raw sugar and molasses on the plantation where produced. During the period of time from November 20, 1946, to September 14, 1947, the Plaintiff has not processed any cane except that grown by itself on its plantation, nor has it engaged in any sugar refining operations. Substantially all of the land (9663 acres) devoted to sugar cane production during said period of time has been owned or leased and used by Plaintiff for this purpose since 1910.

5. On its plantation during the period from November 20, 1946, to September 14, 1947, Plaintiff prepared and plowed the fields for the planting of

sugar cane; planted sugar cane; [11] ratooned the fields; cultivated sugar cane; applied fertilizer to the cane fields; irrigated cane fields by a network of irrigation ditches and water storage reservoirs; harvested sugar cane; maintained a network of field roads (which criss-crossed the cane-growing land) for the transportation by truck of labor, field supplies and equipment throughout the plantation; and transported sugar cane by a narrow-guage railroad (which also criss-crossed the cane growing land) from the fields where grown to the Plaintiff's mill.

6. The Plaintiff's mill was located on its plantation. At the mill during the period from November 20, 1946, to September 14, 1947, the Plaintiff ground the sugar cane into raw sugar and molasses and loaded bagged raw sugar and molasses for shipment to the continental United States. The loading of the bagged raw sugar and of the molasses into the railroad cars of an independently owned and operated carrier at the site of the mill and the pushing of such cars from such site onto a nearby spur of the carrier, completed the operations of the Plaintiff and the work of its employees relative thereto.

7. During the period from November 20, 1946, to September 14, 1947, Plaintiff had equipped and maintained complete service shops for prompt minor repairs and emergency work and major overhaul of agricultural and processing machinery, equipment and facilities indispensable to its growing, harvesting and processing operations. These

service repair shops were located in an area extending not more than 300 feet from the mill building proper.

8. During the period from November 20, 1946, to September 14, 1947, Plaintiff owned and maintained 820 dwelling houses, all [12] of which were located on the plantation; various facilities and services were provided the occupants of such dwelling houses. During said period these dwelling houses were occupied by 3373 persons, of whom 2952 were employees and pensioners of the Plaintiff and their families. The remaining 421 persons living in such houses were persons and their families who were not employed by the Plaintiff and who either worked off the plantation or who owned, operated or were employed by independently controlled businesses within it. No employee, including each of the defendants herein, was required during said period of time or at any other time as a condition of employment to live on the plantation or in plantation dwelling houses or to use any service or facility which the plantation furnished or rendered its employees. The relationship which existed between the Plaintiff and its employees by virtue of the occupancy of such houses, including each and every employee Defendant herein, during the period of time involved in this suit, was that of landlord and tenant.

9. During each and every workweek of the period involved herein, namely from November 20, 1946, to September 14, 1947, both dates inclusive,

the Defendants were engaged on Plaintiff's plantation in growing, cultivating, harvesting and processing sugar cane and in performing various operations incidental and functionally necessary and indispensable thereto and in repairing and maintaining dwelling houses of the Plaintiff that were located on the plantation and in furnishing related facilities and services to the occupants of such dwelling houses. During each and every workweek of the said period of time, each and every Defendant generally worked in excess of forty hours. [13] During said period Plaintiff generally did not pay any Defendant overtime compensation in accordance with the standards of Section 7(a) of the Act in that Plaintiff generally did not pay any Defendant overtime compensation for all hours worked by him in excess of 40 per workweek. In such instances where during said period Plaintiff did pay any of said Defendants overtime compensation for all hours worked by him in excess of 40 per workweek there is a controversy between the parties as to whether the Act required such payment.

IV.

Statement of Controversy

10. The controversy between the parties hereto relates to the judicial construction of Sections 3(b), 3(f), 3(j), 6, 7(a), 7(c) and 13(a) (6) of the Act, and the application of those sections of the Act to the work performed by the Defendants during the period of time from November 20, 1946, to September 14, 1947, both dates inclusive. The meaning and

scope of these provisions have been the subject of a serious dispute for many years between the Plaintiff and the Defendants.

11. Plaintiff contends:

(a) That during each and every workweek from November 20, 1946, to September 14, 1947, both dates inclusive, each and every Defendant was an employee, "employed in agriculture" as the term "agriculture" was defined in Section 3(f) of the Act and that, therefore, each said Defendant was exempt during each workweek of said period from the overtime provisions of the Act, i.e., Section 7(a), as provided by Section 13(a) (6) of the Act;

(b) That during each and every workweek of said period of time each and every Defendant, when engaged in the hauling [14] of sugar cane from the fields to the mill, the processing of sugar cane into raw sugar and in their incidental and functionally necessary and indispensable operations, was also exempt from the overtime provisions of the Act, i.e., Section 7(a), as provided by Section 7(c) of the Act; and

(c) That during each and every workweek of said period of time each and every Defendant, when engaged in work in connection with the repair and maintenance of Plaintiff's dwelling houses and the furnishing of related facilities and services to Plaintiff's employees and others occupying such houses under a landlord-tenant relationship with Plaintiff, was not "engaged in commerce or in the production of goods for commerce" as the terms

"commerce" and "produced" were defined in Sections 3(b) and 3(j) of the Act and that, therefore none of the overtime provisions of the Act applied to any said Defendant when he was so engaged during said period; and that even if any Defendant was "engaged in commerce or in the production of goods for commerce," as the terms "commerce" and "produced" were defined in the Act, during any workweek of said period of time, he was exempt from the overtime provisions of the Act by virtue of Section 13(a) (6) or 7(c).

12. The Defendants deny each and every contention and allegation of the Plaintiff as set forth in Paragraph 11 of this Amended Complaint.

V.

Necessity for Relief of Declaratory Judgment

13. The meaning of the agriculture and agricultural processing exemptions in the Act and the scope of its coverage have long been a subject of controversy between Plaintiff and its [15] employees including each and every Defendant herein. The Plaintiff is in need of relief of declaratory judgment in order to avoid:

(a) A multiplicity of suits under Section 16(b) of said Act with consequent vexation, cost and expense of defending said suits;

(b) Suits brought under Section 16(b) of the Act in different jurisdictions—in the United States District Court or Territorial Courts—and the de-

lays incident to final determination and the chances of different adjudications by different jurisdictions;

(c) Delays in settlement of the controversy if final determination of the legal questions is left to adjudication in various suits brought under Section 16(b); and

(d) Great expense in paying overtime compensation in accordance with the standards of Section 7(a) of the Act and the Defendants' contentions.

VI.

Prayer

Wherefore, Plaintiff respectfully prays that it may be declared, ordered, adjudged and decreed as follows:

(a) That during each and every workweek of the period involved herein each and every Defendant was an employee "employed in agriculture" as the term "agriculture" was defined in Section 3(f) of the Act and that, therefore, each said Defendant was exempt during each workweek of said period from the overtime provisions of the Act pursuant to the provisions of Section 13(a) (6);

(b) That during each and every workweek of the period involved herein, each and every Defendant, when engaged in the [16] hauling of sugar cane from the fields to the mill, the processing of sugar cane into raw sugar, and in their incidental and functionally necessary and indispensable operations, was also exempt from the overtime provisions of the Act by virtue of Section 7(c) thereof; and

(c) That during each and every workweek of the period involved herein each of the Defendants, when engaged in work in connection with the repair and maintenance of Plaintiff's dwelling houses and the furnishing of related facilities and services to Plaintiff's employees and others occupying such dwelling houses under a landlord-tenant relationship with Plaintiff, was not "engaged in commerce or in the production of goods for commerce" as the terms "commerce" and "produced" were defined in Sections 3(b) and 3(j) of the Act; and that even if any Defendant was "engaged in commerce or in the production of goods for commerce" during any workweek of said period of time, he was exempt from the overtime provisions of the Act by virtue of Section 13(a) (6) or 7(c).

Plaintiff further prays for such other relief as to the Court may seem just and proper.

Dated at Honolulu, T. H., this 21st day of August, 1950.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
ANDERSON, WRENN & JENKS,
/s/ ERNEST C. MOORE, JR.,
PRATT, TAVARES & CASSIDY,
Attorneys for Plaintiff.

I consent to the filing of the above-Amended Complaint.

/s/ RICHARD GLADSTEIN,
Attorney for the Defendants.

[Title of District Court and Cause.]

UNITED STATES MARSHAL'S RETURN

The within Amended Complaint was received by me on the 21st day of August, A.D. 1950, and the same is returned duly executed by me this 22nd day of August, A.D 1950, upon Richard Gladstein, Attorney for the Defendants, by handing to and leaving with Myer C. Symonds, Attorney, Merchant Street, Honolulu, T. H., at the request of Richard Gladstein, Attorney for the Defendants, a certified copy of the original Amended Complaint, at 9:20 a.m.

Dated at Honolulu, T. H., this 22nd day of August, A.D. 1950.

OTTO F. HEINE,

U. S. Marshal, District of Hawaii.

By /s/ EMMANUEL U. MOSES, JR.,

Deputy.

[Endorsed]: Filed August 21, 1950. [18]

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT, AND COUNTER-CLAIM, CROSS-CLAIM AND CROSS-COMPLAINT

Come now the defendants above named, and answering the Amended Complaint on file herein, and further by way of and as a Counter-Claim, Cross-Claim and Cross-Complaint against the plaintiff named above, deny, admit and allege as follows:

I.

Admit the allegations contained in Paragraphs 1, 2, 3, 4 (except as hereinafter denied), 5, 6 (except as hereinafter denied), 7, 8 (except as hereinafter denied), 10, 11, 12 and 13 of the Amended Complaint. [20]

II.

In reference to Paragraph 6 of the Amended Complaint, defendants allege that during the period covered by this action the plaintiff company, together with thirty other sugar plantation companies operating in the Territory of Hawaii, and comprising the vast majority of such companies in said Territory, and producing in excess of seventy-five per cent of the total sugar produced in said Territory, were members and in control of the California and Hawaiian Sugar Refining Corporation, Limited, a California cooperation, which had been and was qualified as a cooperative marketing association under the Federal Capper-Volstead Act and under the laws of California; that the members of said

cooperative, including plaintiff company, were during all of said period of time under contract to deliver and did deliver all of the raw sugar produced by them to said cooperative; that said deliveries, insofar as plaintiff company was concerned, were made as referred to in said Paragraph 6 of the Amended Complaint, being placed into the railroad cars there referred to, and said deliveries continued thereafter by rail, by ship, and by subsequent transport on the Mainland of the United States, to and into a certain refinery located in Crockett, California, which refinery was owned, controlled and maintained by the said cooperative; that the greater part of said raw sugar so delivered was then and there refined at Crockett, California; that thereafter such refined sugar, and the portions of raw sugar not refined, were sold by the said cooperative; that all proceeds of the sale of such refined sugar and raw sugar were after the deduction of expenses, distributed to or [21] held for the account of the member plantations of said cooperative in direct proportion to, and in accordance with, the sugar furnished to said cooperative by said plantations, including the plaintiff company.

III.

In reference to Paragraphs 4 and 8 of the Amended Complaint, these defendants have no information or belief sufficient to enable them to answer the allegations contained therein, and basing themselves on said ground deny each and every, all and singular, generally and specifically, the allegations contained therein.

IV.

In reference to Paragraph 9 of the Amended Complaint, the allegations contained in the first sentence thereof are denied, and in this connection the defendants allege that they have performed work, tasks and duties for plaintiff company during various workweeks contained within the period of time involved in said action, and in many instances in excess of forty hours per workweek, without receiving overtime compensation for hours per workweek in excess of forty up to forty-eight, and which said work, tasks and duties constituted production for commerce as defined by the said Fair Labor Standards Act.

V.

The said work, tasks and duties performed by defendants for plaintiff were and are within the coverage and protection of said Fair Labor Standards Act, and not within [22] any exemptions contained therein, and by reason thereof the said plaintiff became and was obligated to pay to defendants, for hours worked in excess of forty per workweek, compensation at the rate of one and one-half times the regular rate of pay of defendants; that during various workweeks covered in this action, the defendants did in fact work hours in excess of forty per workweek, and by reason thereof were entitled to receive overtime compensation as aforesaid, as required by said Fair Labor Standards Act; that plaintiff failed and refused to pay such overtime compensation; that defendants have made claim and demand of plaintiff that payment of such unpaid

compensation be made, and plaintiff has refused and neglected to comply with said claims and demands; that there is due and owing from plaintiff to the defendants certain sums of money for such unpaid overtime compensation, and judgment against plaintiff and in favor of defendants should be rendered in the amounts so due and owing, as established by evidence which defendants are prepared to and will produce in the trial of this action.

Wherefore, defendants pray for judgment against plaintiff for unpaid overtime compensation, liquidated damages in amounts equal to such compensation, costs and attorney's fees, and for such other relief as may be just and proper.

Dated Honolulu, T. H., this 23rd day of August, 1950.

RICHARD GLADSTEIN,
GLADSTEIN, ANDERSEN,
RESNER & LEONARD,
By /s/ RICHARD GLADSTEIN,
Attorneys for Defendants.

[Endorsed]: Filed August 23rd, 1950. [23]

[Title of District Court and Cause.]

REPLY AND ANSWER TO COUNTER-CLAIM, CROSS-CLAIM, AND CROSS-COMPLAINT

Comes now the Plaintiff above named, by its attorneys, Ronus G. Poole, Livingston Jenks and Ernest C. Moore, Jr., and for reply and answer to the Counter-Claim, Cross-Claim and Cross-Complaint appearing in Paragraph V of Defendant's Answer to Amended Complaint, and Counter-Claim, Cross-Claim and Cross-Complaint, admits, denies, and alleges as follows:

1. Plaintiff denies each and every allegation contained in Paragraph V of the Defendants' Answer to Amended Complaint, and Counter-Claim, Cross-Claim and Cross-Complaint, except that it admits

a. That during each and every workweek from November 20, 1946, to September 14, 1947, both dates inclusive (the period of time involved in this action), each and every Defendant generally worked in excess of forty hours;

b. That during said period Plaintiff generally did not pay any Defendant overtime compensation in accordance with [25] the standards of Section 7(a) of the Fair Labor Standards Act of 1938 (hereinafter called the Act) in that Plaintiff generally did not pay any Defendant overtime compensation for all hours worked by him in excess of forty per workweek; and

c. That Defendants have demanded that Plaintiff pay them overtime compensation in accordance with the standards of Section 7(a) of the Act as aforesaid for the period covered by this action but that Plaintiff has refused to comply with such demand and claim.

In connection with Plaintiff's refusal to pay Defendant such overtime compensation it alleges that each and every Defendant during each and every workweek covered by the Complaint, namely from November 20, 1946, to September 14, 1947, either was not engaged in commerce or in the production of goods for commerce within the meaning of the Act or was exempt from the overtime provisions of the Act—

a. As provided in Section 13(a) (6) of the Act because he was "employed in agriculture" as the term "agriculture" is defined in Section 3(f) of the Act, or

b. As provided in Section 7(c) of the Act because he was employed by the Plaintiff where the Plaintiff was engaged in the "processing of * * * sugar cane * * * into sugar (but not refined sugar) or into syrup," or

c. As provided in Section 13(a) (2) of the Act because he was an "employee engaged in any retail or service establishment the greater part of whose selling or servicing is not intrastate commerce."

In view of the foregoing, the Plaintiff was not re-

quired by the Act to pay the Defendants any overtime compensation. [26]

2. For the period November 20, 1946, to May 13, 1947, inclusive, the act or omission, if any, of Plaintiff to pay the Defendants in accordance with the claims of Defendants as set forth in paragraph V of the Defendants' Answer to Amended Complaint, and Counter-Claim, Cross-Claim and Cross-Complaint, was in good faith in conformity with and in reliance on administrative regulations, orders, rulings, approvals, and interpretations of agencies of the United States and in good faith in conformity with and in reliance on administrative practices and enforcement policies of agencies of the United States with respect to the class of employers to which Plaintiff belonged. Pursuant to Section 9 of the Portal-toPortal Act of 1947, therefore, Plaintiff is not liable to the Defendants or any of them for any act or omission during the period November 20, 1946, to May 13, 1947, inclusive, complained of by Defendants.

3. For the period May 14, 1947, to September 14, 1947, inclusive, the act or ommission, if any, of Plaintiff to pay the Defendants in accordance with the claims of Defendants as set forth in paragraph V of the Defendants' Answer to Amended Complaint, and Counter-Claim, Cross-Claim and Cross-Complaint, was in good faith in conformity with and in reliance on written administrative regulations, orders, rulings, approvals, and interpreta-

tions of the Administrator of the Wage and Hour Division, U. S. Department of Labor, and in good faith in conformity with and in reliance on administrative practices and enforcement policies of the said Administrator with respect to the class of employers to which Plaintiff belonged. Pursuant to Section 10 of the Portal-to-Portal Act of 1947, therefore, Plaintiff is not liable to the Defendants or any of them for [27] any act or omission during the period May 14, 1947, to September 14, 1947, inclusive, complained of by Defendants.

4. During all periods of time referred to in paragraph V of the Defendants' Answer to Amended Complaint, and Counter-Claim, Cross-Claim and Cross-Complaint, the act or omission, if any, of Plaintiff to pay the Defendants in accordance with the claims of Defendants as set forth in said paragraph, was in good faith and Plaintiff had reasonable grounds for believing that such act or omission was not a violation of the Act. The court therefore, pursuant to Section 11 of the Portal-to-Portal Act of 1947, should in the exercise of its discretion award no liquidated damages to Defendants.

Wherefore Plaintiff prays that Defendants take nothing by their Counter-Claim, Cross-Claim and Cross-Complaint, that the Counter-Claim, Cross-Claim and Cross-Complaint herein be dismissed and that Plaintiff have such other and further relief as may be proper in the premises.

Dated Honolulu, T. H., this 25th day of August, 1950.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
ANDERSON, WRENN & JENKS,
/s/ ERNEST C. MOORE, JR.,
PRATT, TAVARES & CASSIDY,
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed August 25, 1950. [28]

[Title of District Court and Cause.]

AMENDMENT TO ANSWER TO AMENDED COMPLAINT, AND COUNTER-CLAIM, CROSS-CLAIM, AND CROSS-COMPLAINT

Come now the defendants, counter-claimants, cross-claimants and cross-complainants above named, and upon consent of plaintiff, and with leave of Court first had and obtained, do file the within Amendment to that certain pleading heretofore filed and designated as "Answer to Amended Complaint, and Counter-Claim, Cross-Claim, and Cross-Complaint," and for such Amendment do allege as follows:

1. In reference to the allegations contained in Paragraph V of said Answer to Amended Com-

plaint, and Counter-Claim, [29] Cross-Claim, and Cross-Complaint, and by way of further allegation in respect of the same, it is hereby alleged that the work, tasks and duties performed for plaintiff by the defendants, as referred to in said Paragraph V, were compensable by the express provisions of then existing, applicable and effective written collective bargaining contracts entered into and carried out by plaintiff and by the collective bargaining representative of defendants; that said work, tasks and duties, and all activities connected therewith, were further compensable by reason of custom and practice, then and there in effect during all of the time said activities were performed, and particularly during all of the time covered by the Complaint on file herein, at and within the establishments and places where these defendants were employed, and that said customs and practices did cover said activities, and were not in anywise inconsistent with any written or non-written contracts in effect at the time of the performance of such activities; that the work, tasks, duties and activities performed by defendants for plaintiff, referred to and described in said Paragraph V, consisted of and were the main and principal work and duties for which defendants were employed by plaintiff, and were the main and principal duties and functions actually performed by defendants; that all such work and activities were engaged in and performed by defendants during the portions of the days with respect to which the same were made compensable as aforesaid; that

all such work, tasks, duties and activities were in fact intended to be, and were, paid for and compensated by plaintiff, and no dispute exists between the parties as to whether such activities should have been paid for, but on the contrary the [30] dispute between the parties is as to whether the amounts paid by plaintiff have been sufficient to discharge its obligations under the said Fair Labor Standards Act for overtime compensation.

Wherefore, defendants pray for judgment as requested in the said Answer to Amended Complaint, and Counter-Claim, Cross-Claim, and Cross-Complaint.

Dated Honolulu, T. H., this 29th day of August, 1950.

RICHARD GLADSTEIN,
GLADSTEIN, ANDERSEN,
RESNER & LEONARD,
By /s/ RICHARD GLADSTEIN,
Attorneys for Defendants.

We consent to the filing of the above Amendment.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
/s/ ERNEST C. MOORE, JR.,
Attorneys for Plaintiff.

[Endorsed]: Filed August 30, 1950. [31]

[Title of District Court and Cause.]

STIPULATION

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It Is Hereby Stipulated by and between Waialua Agricultural Company, Limited, Plaintiff herein, by and through Rufus G. Poole, Livingston Jenks, and Ernest C. Moore, Jr., it Attorneys, and Ciraco Maneja, Antone Vierra, Augustine Lorenzo, Haru Kibota, Tadao Watanabe, Koichi Okouchi, Tsuruo Hayashi, Cornelio Asuncion, Roque Crisostomo, Peter Holmberg, Hatsusuke Sera, Takumi Okouchi, Pedro Dumlao, Bernabe Hernandez, Domingo Guigui, Ushinosuke Kondo, Teruichi Kubo, Masaiki Oato, Simon Cumlat, Apolonio Lazo, Giichi Hamamoto, Dionicio Carrit, Seraphine Robello, Toshio Tanaka, Barney Faria, Fumio Sunahara, Hirosaku Takata, Alfred Reyher, Masaru Ezawa, Damaso Claunan, Antone Robello, Yoshiji Yamada, Edwin Mori, Genjiro Hironaka, Jiro Sakai, Margaret Fujiwara, Louis Pacheco, Yukishige Tsutsui, Yack Chun Lee, Eiko Sakaguchi, Moses Fernandez and Toshio Kashiwabara, Defendants herein, by and through their Attorney, Richard Gladstein, in Civil Action No. 787, that the following are true and accurate facts: [36]

Part I.

Description of the Plantation and Its Operations

1.

Name and Location of Company

Waialua Agricultural Company, Limited, hereinafter sometimes referred to as the "Plantation,"[1]

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[1]The term "Plantation" is also used in this stipulation to mean the geographical area on which the Waialua Agricultural Company, Limited, is pro-

is a corporation duly organized and existing under and by virtue of the laws of the Territory of Hawaii, having been organized in 1898, with its head office located in Honolulu, City and County of Honolulu, Territory of Hawaii, and its plantation located in the District of Waialua, City and County of Honolulu, Territory of Hawaii.

2.

The Business of the Plantation

Since the original incorporation of the Company in 1898, the business of the Plantation has been and continues to be the growing, cultivating and harvesting of sugar cane on lands owned or leased by the Plantation; the processing of such sugar cane into raw sugar and molasses; the bagging, loading and shipping of the raw sugar to refineries situated in the continental United States; and the loading and shipping of molasses in bulk to continental United States, all of which is hereinafter described. The loading of the bagged raw sugar and of the molasses into railroad box and tank cars of the Oahu Railway & Land Company, an independently owned and operated carrier (hereinafter referred to as the [37] "O. R. & L."), at the site of the mill[2]

ducing sugar cane, processing it into raw sugar and conducting related operations.

[2]The term "mill" as used herein means the building and equipment of the plantation used in the actual processing of sugar cane into raw sugar, including cane carrier, cane cleaning plant and scales, crushing plant, boiling house, fire room, power plant, sugar warehouse and molasses tanks, and all equipment therein.

and the pushing of such cars from such site onto a nearby spur of the O. R. & L., complete the operations of the Plantation and the work of its employees relative thereto. The Plantation does not engage in any sugar refining operation.

3.

Relative Position of Plantation in Territory

The Waialua Agricultural Company, Limited, is one of thirty-four (34) sugar plantations located, operating and doing business in the Territory of Hawaii (hereinafter referred to as the "Territory"). The total raw sugar produced by these thirty-four plantations in 1945 was 821,216 tons. Of this amount the Waialua Agricultural Company, Limited, produced 56,193 tons or slightly less than 7%, and as such it ranked as the third largest producer of raw sugar in the Territory in 1945. The total number of employees of the thirty-four plantations as of September 1, 1946, was 29,517 and was approximately 28% of the total number of persons privately employed in the Territory. The raising of sugar cane and the processing of it into raw sugar constitutes the principal industry in the Territory in terms of the number of persons privately employed, invested capital and the value of the product produced. Between the years 1941 and 1945, the Territory produced between 13.30% and 10.76% of all sugar, both beet and cane, distributed for consumption in the continental United [38] States.

4.

Sugar Cane Not an Article of Interstate Commerce

Sugar cane is highly perishable, as will be hereinafter described, and starts to deteriorate immediately after harvesting. To avoid serious losses it must be processed into sugar, syrup or molasses within a few hours after it has been burned[3] or severed from the ground. For this reason and because of the great weight and bulkiness of cane as compared with raw sugar, it must be processed within a few miles of where it is grown. Sugar cane never moves into interstate commerce in its natural state. Except for small amounts which are used as seed cane, it is grown exclusively for the purpose of producing sugar, syrup or molasses and it is these end products, which are the result of the processing of cane, which becomes articles of interstate commerce.

5.

Some General Facts About the Plantation

At the present time the Plantation grows and produces sugar cane on 9,663 acres of land owned or leased by it. Substantially all of the land now devoted to sugar cane production has been owned or leased by the Plantation and used by it for this purpose since 1910. The table set forth in paragraph 34 of this stipulation will show that the num-

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[3]The references herein to the "burning" of sugar cane are to the burning of the leaves and rubbish in the cane field as part of the harvesting operation. In such burning the cane stalks are undamaged.

ber of acres under cane cultivation since 1910 fluctuated above and below the present cane acreage by approximately 10%. [39] The acreage reduction shown for 1935 was due to the establishment of quotas by the Federal Government under the authority of the Agricultural Adjustment Act of 1933, 7 USCA § 601 et seq., but the acreage eliminated from cultivation at that time was eliminated on a temporary basis only, and continued as a part of the plantation and was subsequently replanted. In 1915 and 1920 the acreage exceeded present acreage by some 10%. This was due to the fact that the Plantation was at that time attempting to produce cane on certain of its marginal areas, the use of which for such purpose was later abandoned. The cane growing land of the Plantation, its buildings and yard area, and other lands owned or leased by the Plantation, but unsuited for cane growing, including a wooded area from which firewood is cut for use as fuel by plantation employees living in the plantation villages hereinafter described, form a contiguous and compact area as shown by Exhibit "A" which is attached hereto and made a part hereof, except that an area of 470.42 acres of cane growing land located on the lowlands at the west end of the Plantation is connected with the principal area of the Plantation only by a strip of land 40 feet wide and 1,150 feet long over which the Plantation has a perpetual easement for rights-of-way for the moving of its agricultural equipment supplies and sugar cane.

Sugar cane is grown in fields which in one area

of the plantation are cut by deep gulches and waste land unsuited for cane production, while in other areas the fields are separated only by plantation roads or public highways. Cane growing land is criss-crossed with a network of plantation field roads and a narrow gauge plantation-owned railroad. [40] Planting, cultivating and harvesting supplies, materials and equipment are transported over these field roads. The railroad is used to transport cane from the fields to the mill and to transport some agricultural supplies and harvesting equipment between the plantation buildings and yard area and the fields. There is also a network of irrigation ditches throughout the plantation and a number of water storage reservoirs, since all cane grown on the plantation must be irrigated.

All the lands devoted to the growing of sugar cane are managed and operated by the Plantation as an integrated farming unit and single enterprise with identical cropping, cultivation and harvesting practices, and with the same labor and equipment. Employees work in the fields moving from one area to another depending upon the program of plowing, planting, irrigating, fertilizing, applying herbicides and insecticides, weeding and harvesting. The cane lands are in various stages of production or preparation. Some acreage is being plowed and furrowed for new planting, some is being "ratooned" (a process hereinafter described), some acreage is in young growth, some in old growth nearing maturity and other acreage is being harvested. The growing, harvesting and processing of the cane and

the marketing of the raw sugar constitute one continuous and year around operation except that annually harvesting and processing of cane are suspended for approximately three (3) months for the purpose reconditioning the mill and equipment, as hereinafter described. [41]

As of September 1, 1946, the Plantation had a total of 1,144 employees. The Plantation considers this number of employees sufficient for its operations as conducted at the present time. Its labor requirements are substantially the same throughout the year.

The Plantation has ten (10) job classifications for its rank and file or non-supervisory employees, who numbered 959 as of November 19, 1946. The hourly wage rates for such ten (10) classifications range from a minimum of 80c to a maximum of $1.38. The Plantation, however, employs 12 handicapped, superannuated and part-time workers who receive a minimum hourly wage of 74c. The weighted average hourly wage rate for all non-supervisory employees of the Plantation is 90.8c. The existing collective bargaining agreement dated November 19, 1946, between the Plantation and the International Longshoremen's and Warehousemen's Union, Local 145-7, as collective bargaining agent for most of the non-supervisory employees, which contract sets forth the wages, hours and working conditions of the employees herein involved, is attached hereto as Exhibit "B" and made a part hereof.

Prior to March 1, 1940, the Plantation paid no overtime compensation but since that date it has

paid time and one-half for all hours worked in excess of eight in one day and forty-eight in one work week. Work performed on New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day have also been compensated at the rate of time and one-half since March 1, 1940.

On July 12, 1943, most of the office staff and most of the warehouse employees were placed on a 40-hour work week schedule and have continued since that date on such schedules [42] with time and one-half being paid for all hours worked in excess of forty per week.

Since October 4, 1943, employees in the mill and in the allied service shops have been paid time and one-half during the off season for all hours worked in excess of forty per week.

It is the contention of the plaintiff that the provisions of the Fair Labor Standards Act do not require it to pay any of its employees overtime compensation. Conversely, it is the contention of the defendants that such Act requires the plaintiff to pay all of its employees time and one-half for all hours worked in excess of forty per week.

All Plantation operations and activities are under the over-all direction and control of the Plantation manager. Under him as immediate assistants are the assistant manager and three staff assistants, the field and mill coordinator, and the personnel training and development director.

The various plantation operations described hereinafter are each under the supervision of a manager or superintendent as follows: Field operations,

the field superintendent; mill and allied shop operations, the cane processing superintendent; warehouse, the warehouse superintendent; construction, the construction superintendent; accounting, the office manager; and civil engineering, the civil engineer. All of these superintendents are responsible to the plantation manager.

6.

Location of Buildings and Facilities on Plantation

The plantation buildings, including the mill, which processes the cane into raw sugar, a number of buildings housing [43] repair shops for the maintenance of field, transportation and mill equipment, warehouses for plantation supplies, and other buildings having functional relation to the entire plantation operations, are centrally located on the lowlands of the plantation in a small, compact and contiguous area. The administration offices of the Plantation are located on the plantation within a distance of not more than one-fourth (1/4) of a mile from the other buildings. Surrounding such plantation buildings and administration office area are plantation-owned houses in which employees working in both field and mill live with their families. Community service establishments and recreational facilities are also located here. Public highways and an independently owned narrow gauge railroad cut across this area. Other company-owned facilities include a hospital and a general merchandise retail store which sells to both plantation employees and

the general public. Located along the public highways running through the plantation are non-plantation-owned stores, shops, theatres, automotive service stations, barber shops, churches, a bank and other facilities which are normally a part of any typical small community in a farming area. See Exhibit "A" which illustrates the general description given above of the location of the cultivated areas, gulches, waste lands, buildings, plantation and private communities and highways.

7.

Preparation of Land for Planting

Sugar cane is a giant bunch-grass producing clumps or stools of solid strongly jointed stalks or sticks measuring from 1 inch to 2½ inches in diameter, well developed stalks [44] reaching on an average 10 feet to 15 feet in height. The sugar cane grown on the plantation requires generally 22 to 24 months to mature after planting or "ratooning." Three or four crops can be obtained from each planting, fields being replanted each six to eight years. Between these times of planting a field is "ratooned" at the end of each harvest. Seed used for planting is actually 24-inch to 30-inch young cane cuttings. These cuttings of cane have nodes every 5 inches to 8 inches apart. At every node there is a bud which forms a new stool. Planting seed is obtained from cane that is eight to twelve months old.

Plowing of the field for the planting of new crops commences soon after the harvesting operations on

the previous crop are completed. The plowing is performed with 110-horsepower diesel powered tractors with rooter type subsoil attachment. The subsoil is broken up to a depth of 18 inches to 24 inches. Two or more subsoil plowings of each field are carried out, the second plowing being performed at right angles to the first. After the field has been subsoil plowed twice, a disc plow (eight 28-inch discs) is drawn by a tractor over the field, breaking up large cane stools and lumps and turning over the soil. When this operation is completed, the subsoil tractor subsoils the field once again and the final plowing is completed with the disc plow. This leaves the field well broken up and ready for the planting operation. Each type of plow used in the above operation is manned by a tractor operator and helper. Tractors may be operated in two shifts or one shift may work longer than the customary eight hours depending upon the urgency of completion of the plowing operation. [45]

After the field is plowed, a crew of six men including a tractor operator using a tractor with a "stone boat" attachment, clears the field of obstructions, such as stones. This same crew and tractor are also used to move concrete irrigation flumes and pipes to the proper location, if the locations are to be changed.

8.

Planting

Planting is done by a planter machine mounted on a 75-horsepower diesel powered tractor manned by a crew of eight men including the tractor oper-

ator. This planter consists of a platform which will hold sixty to seventy-five bags of seed weighing sixty-five to ninety pounds each. The bagged seed is spotted in the field prior to planting and is loaded onto the planter by the planting machine crew. A fertilizer hopper is also mounted on the tractor, and fertilizer is distributed concurrently with the planting. The planter progresses across the field and two mold boards attached to the tractor drawbar make two "V" shaped furrows from fourteen to eighteen inches deep. The seed is guided by chutes from the platform of the planter to the furrows; fertilizer is distributed in the furrows from the fertilizer hopper. The planting machine plants about one acre per load. After the planter drops the seed and fertilizer, a gang consisting of ten to fifteen men with hoes follows the planter spacing the seed and covering it with an inch or two of soil. A flume laying gang, consisting of fifteen men under the supervision of a flume laying foreman, then proceeds to install concrete flumes. These flumes are spotted throughout the field having been brought up by truck from the plantation concrete products plant where they are made. Sections [48] of concrete flumes are from 30 inches to 36 inches long and are approximately 15½ inches wide at the top. A small crew of eight men construct necessary headings, which are special wood or concrete flume headings or gates required at the point at which water is brought into the field. Field irrigation lines are carefully plotted out according to prearranged plan and method which will be described

hereafter. As soon as possible after the seed is planted, irrigation water is applied.

Approximately six weeks after the planting has been completed and the crop has commenced to grow, further planting is performed to the extent of filling in any blank spots where the cane seed has failed to germinate. The seed is hauled by truck to the edge of the fields and then spotted throughout the field by pack mules. This work is done by a pack mule man, with a helper. Holes are dug by hand hoe, and seed pieces are then laid in these holes by hand and covered to a depth of two inches. A gang of approximately twenty-four employees perform this work.

9.

Ratooning

As previously stated, fields are replanted each six or eight years. Between these times of planting a field is "ratooned" at the end of each harvest. "Ratooning" is a term referring to the operations performed after a field is harvested to prepare the field for the growing of another crop. In such preparation the old cane stools or stubble are left in place and the ground is refurrowed into rows. The undamaged cane stools or stubble will then send up new [47] shoots upon application of water and fertilizer to the field. New seed is added to fill in blank spots or to replace damaged stools or stubble.

10.

Cultivation

To control weeds, herbicides are applied. The

first application is performed within one week after planting in order to destroy the first germination of the weeds. Thereafter herbicides are applied at intervals varying from fifteen to twenty days depending on the weather and the condition of the field. The last application is performed when the cane is approximately six months old. Thereafter spraying of herbicides is limited to the spraying of irrigation flume areas, for a distance of ten to fifteen feet on either side of the flume, and also spraying of the area along the main ditches and the level ditches within such particular field area.

Herbicide gangs are composed of thirteen to nineteen men. Each man in the gang is equipped with a knapsack sprayer; that is, a sprayer which is strapped to the backs of the men, the herbicide being applied by means of a nozzle at the end of a hose which is directed by hand as the gang members walk along the areas being treated.

After two or three applications of the herbicides, a weeding gang composed of fifteen to twenty-five men remove the remaining weeds with the use of hoes. A gasoline driven tractor equipped with two revolving discs at either side of the cane stool is sometimes used. The tractor cuts the weeds and throws them to the top of the banks between the rows of planted cane. [48]

Truck sprayers of herbicides are employed to control weed growth on plantation field roads and along storm ditches and main irrigation ditches. This operation utilizes a truck which carries a tank of 1,000-gallon capacity and a special spray pump

which pumps the herbicide through a hose pipe equipped with a spray nozzle. One man then guides the nozzle along the road sides and ditches.

Although insecticides are occasionally called for, their application is infrequent. When performed, the method used is a similar knapsack spraying, applying the insecticides to the top of the cane. Herbicide gangs perform this operation also.

A total of approximately forty men is engaged in herbicide operations.

11.
Fertilizing

After planting there are two or three additional applications of fertilizer before the cane reaches the age of seven months. The fertilizer is hauled by truck to the edge of the field or nearest point of distribution and then reloaded on pack mules, which place bags alongside the irrigation flumes or level ditches according to the number of pounds to be applied per acre. Each man in the fertilizer gang, numbering twelve men, is equipped with a bag which he fills with fertilizer and then proceeds along the cane rows applying the same by hand near the base of the cane stools.

Irrigation water is also used to apply fertilizer to the field after the cane is too high to permit hand application. Normally, two applications of fertilizer are applied by water.

Fertilizer applied for the year 1945 totaled 2,855 tons. [49]

12.

Irrigation

Intensive irrigation throughout the year is required for the entire plantation acreage devoted to sugar cane production. Although the normal annual rainfall is about thirty inches, precipitation is unevenly distributed throughout the year, thereby requiring supplemental irrigation at all times.

An extensive and comprehensive system of water supply from surface and artesian sources has been developed by the Plantation since it was incorporated in 1898. The primary source of surface water is the Wahiawa Reservoir, constructed and developed in 1904-06 and operated by another company. This reservoir has a storage capacity of 2,540 million gallons, obtained from a mountain watershed. Water from this reservoir is conveyed through four miles of tunnel and open ditch to the 750-foot contour of the Plantation where it is conveyed through a major canal forming in general the upper boundary of the cultivated area.

Surface water is diverted by small dams at the headwaters of the streams running down the gulches indicated as wasteland on the map marked Exhibit "C" which is attached hereto and made a part hereof. Flow from the streams in these gulches is sporadic and reservoir capacity to store freshet peaks is limited.

In addition to the above sources of water, a system of deep well pumps has been developed gradually on the Plantation since 1898 to tap the artesian slopes from the two mountain ranges lying

on either side of the Plantation. The present pump system comprises twenty-two pumping stations with a rated capacity of 11.36 million gallons per 24-hour day. [50] Three of these units are powered by steam; the remainder are operated by push-button controlled electric power units.

In addition to supplying irrigation water for sugar cane production, the artesian system supplies the mill and the domestic water needs of the plantation villages. Occasionally, water from artesian wells is also supplied to home gardens of plantation employees and to small farmers, all of whose produce is consumed locally. Artesian water may also be used for fire protection purposes. Surface flow water may be used, however, for home gardens, as well as for fire protection needs.

The following table summarizes the amount of water received from various sources during the years 1941-1945, and reflects the amounts of these totals which have been required for irrigation purposes: [51]

(In millions of gallons)

	1940	1941	1942	1943	1944	1945
Steam Pumps	4,186.93	5,082.49	3,059.50	4,250.56	5,842.23	6,495.03
Electric Pumps	12,183.16	12,347.43	7,747.88	8,445.01	12,601.78	11,979.92
Total Pump Water	16,370.09	17,900.47	10,807.38	12,695.57	18,444.01	18,474.95
Wahiawa Res.	9,835.10	7,508.97	8,835.71	9,366.64	8,000.40	6,539.75
Helemano Stream	1,874.82	1,710.95	2,306.17	1,698.47	1,820.14	1,023.05
Opaeula Stream	1,926.33	2,138.21	1,979.71	1,855.05	1,590.53	1,014.43
Kamananui Stream	1,235.88	1,140.51	1,852.34	1,193.41	567.35	229.58
Total Surface Water	14,945.83	12,541.40	15,069.35	14,182.48	12,028 95	8,806.81
Total Water Received	31,315.92	30,441.87	25,876.73	26,878.05	30,472.96	27,265.26
Total Water Used for Cane Irrigation	30,547.71	29,895.84	24,665.12	26,002.83	29,658.02	26,506.95

A flexible system of earth, concrete and stone-lined canals, steel inverted siphons, and concrete pipes and flumes distributes water to the cane fields of the Plantation. Approximately 50 per cent of the cultivated land of the plantation is irrigated solely by surface water; approximately 5 per cent is irrigated solely by artesian water; and the balance is irrigated by both surface and artesian water.

The plantation is traversed by three main supply canals. The Wahiawa Ditch at the upper boundary of the cultivated area follows approximately the 750-foot contour and delivers gravity water from the Wahiawa Reservoir, supplemented by flows from the other stream diversions. A group of canals at approximately the 300-foot contour receive and distribute water from high-lift pump units, and a third group of canals along the 100-foot contour deliver low-lift pump water. A few low-lift pumps supply artesian water directly to certain areas through separate ditch systems.

In practically all cases, water is delivered from each source to several areas of the plantation across deep ravines and rugged topography which necessitate the use of long inverted steel siphons of 24 to 54-inch diameter or of high flumes. Lateral distribution from each canal is provided by "straight ditches," usually lined with stone or concrete to prevent erosion, through which water is delivered to the fields or to the next lower canal in the system. Distribution reservoirs, of which 30 ranging in capacity from 1.0 to 50. million gallons, have been

constructed by the Plantation, provide night storage and equalize water flows.

One of two methods of irrigation is employed depending upon the topography. On flat lands with a slope of two feet [53] or less to each hundred feet, the field is in furrows running down the slope. Low level ditches extend across the fields at right angles to the furrows. Water flows from the field supply ditches into the level ditches which are spaced approximately 200 to 300 feet down the slope, and the irrigator diverts water into the cane furrows, either by cutting through the banks of the level ditches with a hoe or by using controlled gates on permanent pipes connecting with each furrow. The method described is referred to as the "Long Line" method.

Another method used is the "Herringbone" method. If the field slope is in excess of two feet per one hundred feet, the concrete flumes previously mentioned are laid along the ridges or highlands. The field slope may be as high as 10 or 12 feet per one hundred feet. Openings cast in the sides of the walls at the time of making are spaced so that these openings are opposite the head of each furrow. The furrows run across the field at a moderate grade. The irrigator adjusts the flow of water through the holes in the concrete flume with the use of a metal scoop placed in the flume. These scoops are made in the plantation tinsmith shop for this purpose.

Four water supply ditchmen are responsible for

the inspection, maintenance and control of the upper reservoirs and intake dams. Twelve water distribution ditchmen are responsible for receiving the irrigation water at the main canals and distributing it to the field irrigators. During periods when irrigation is suspended, both the water supply ditchmen and the water distribution ditchmen are engaged in maintenance, cleaning and minor repairs to the ditch and reservoir systems. At present, 105 employees are engaged [54] in field irrigation and incidental cultivation of specific fields. These field irrigators receive water from the field supply ditch or one of the main canals and distribute it according to one or the other of the two methods described above.

The entire irrigation system of the Plantation is located on lands owned or leased by the Plantation and constituting a part of the integrated farming unit. The location of the principal plantation irrigation channels, canals, reservoirs and pumps is shown on Exhibit "C."

The frequency of irrigation applications varies slightly during the year, depending greatly on natural rainfall received and to a lesser extent on the temperature and amount of sunlight. The dominant factor in determining the frequency of irrigation is the age of cane and the consequent spread of the root system and the exposed leaf mass. The mass of stalks and leaves offer great resistance to the flow of irrigation water at the base of the plant, thereby requiring heavy applications of water. A

general schedule of irrigation frequency, for periods without rainfall in excess of 0.50 inch, at the Plantation is:

Cane from 0 to 1 month old: Irrigate every 7 to 10 days.

Cane from 1 to 6 months old: Irrigate every 12 days.

Cane from 6 to 12 months old: Irrigate every 15 days.

Cane from 12 to 18 months old: Irrigate every 18 days.

Cane from 18 months to maturity: Irrigate every 20-25 days.

Cease irrigation from one to three months before harvest. [55]

Irrigation frequency at the Plantation is guided by soil moisture samples collected weekly from each field of the Plantation. The field capacity of each soil type has been determined by standards developed by the U. S. Department of Agriculture, and the soil moisture available to the plant is reported for each locality in terms of acre inches of water available and the number of days interval required to replenish the supply.

For the crop years 1933-1945 inclusive, the ratio of sugar produced to million gallons of water used for irrigation at the Plantation was as follows:

Crop Year	Tons Sugar Produced	Million Gallons Water Applied	Tons Sugar Per M.G. Water
1933	55,473	29,588	1.87
1934	55,669	31,454	1.77
1935	50,580	25,554	1.98
1936	53,855	29,068	1.85
1937	52,957	29,085	1.82
1938	46,853	29,478	1.59
1939	53,879	30,509	1.77
1940	58,212	30,548	1.90
1941	58,410	29,896	1.95
1942	52,967	24,665	2.15
1943	51,875	26,003	1.99
1944	54,684	29,658	1.84
1945	56,193	26,507	2.12

From 1899 to 1941, inclusive, tons sugar are commercial; from 1942, tons sugar are 96° U. S. Department of Agriculture.

13.

Harvesting

Harvesting is programmed at least one or two years in advance and the order of harvesting the various fields determined. In order to assure a continuous and balanced flow of cane to the mill, harvesting schedules must be properly balanced with planting and ratooning of succeeding crops, [56] irrigation water distribution and the capacity of transportation facilities. In this way the harvesting, planting, ratooning, irrigating, transporting and milling operations can be evenly coordinated. Harvesting operations are conducted throughout the year except during the so-called "off-season"—a period of approximately three months when the mill is closed down for repairs as will hereinafter be described. Before any harvesting operations commence, field maps are prepared and the entire harvesting operation is planned out in every detail.

Sugar cane fields ready for harvesting are first burned over. Experience has shown that burning of the sugar cane results in insignificant losses in sugar content while efficiency in harvesting is greatly increased not only in removing the cane from the fields, but also through reduction of the amount of trash carried to the mill. Efficiency in operation of the transportation system as well as in the operation and maintenance of the mill is thereby effected. Trash percentage may run as high as 50 to 60 per cent in harvesting unburned cane, but in harvesting burned cane, trash percentage averages only 13 to 20 per cent. Trash is the term applied to anything other than millable cane, and includes dead cane, soil, foliage, cane stools, stones, tramp iron or any other foreign matter gathered up and sent to the mill in the course of harvesting operations.

An average of 10 to 15 acres of cane is burned at one time. Firebreaks approximately 15 feet wide are cut through the unburned cane by a modified 75-horsepower tractor bulldozer referred to as a bulldozer rake. This machine has a series of nine heavy steel teeth extending out in front of [57] the machine and tears the cane stalks from the stools and pushes the cane off to the side into the upright cane. It requires one operator. A ground crew of four men work with the rake cutting cane stalks missed by the rake and also removing obstructions in the preparation of firebreaks. They also clear areas around telephone and power line poles, fences and pump houses for proper fire protection during cane burning. This crew also aids

the rake operator in making minor repairs on the machine.

After the firebreaks are completed, a crew of six men proceeds under the field supervisor to set fires along the firebreaks. Backfire is a common practice as a safety measure. Burning of the cane may be performed at any time during the day, including early mornings or late evenings depending upon the winds and weather conditions. The six-man crew performing this work is commonly referred to as the "burn cane crew." Four of the men in this crew make up the rake crew referred to above.

After the cane is burned, this rake and the four ground crewmen open up lines through the burned cane for the laying of portable track over which empty cane cars can be hauled from the main line of the Plantation railroad on a siding thereof into the field for loading and full cars can be hauled out of the field, to the main line for transportation to mill. A portable track plow or leveler then follows through the lines opened in the burned areas by the rake to make proper beds for the portable track. This equipment consists of two rails welded together to a point, then spreading out into a large trowel-shaped attachement mounted on the front of a 30-horsepower caterpillar tractor. A rail [58] drag consisting of a number of rails welded together in a rectangular form 9 feet by 6 feet and attached by a chain to the rear of a tractor is pulled along the track lines for further leveling. The plow is used to break up the packed soil while the drag is used to fill or drag out excess soil. Ditches and

manned by one tractor operator. When the tractor is not required, the tractor operator leaves his machine and performs work, as required, with the portable track crew.

When the portable track beds have been prepared, rail cars loaded with sections of portable track are then drawn into the field by tractors. The portable track lifting machines lift the track sections from the loaded cars and place them in approximate position on the track bed. A crew of three men follows, and, with the aid of a pinch bar, draw the sections together, placing shoes on the connecting joints, flush end to end.

After the portable track line has been laid from the main line into the field, empty cars are hauled into position for loading. The number of cars needed for each portable track line is determined by the estimated tonnages of cane on the ground. If the cane tonnage is light, or cane is being picked up after the first loading, the cars are spaced to carry an average weight. If the tonnage is heavy, the cars are left coupled up the full length of such track line.

Where the main line passes through the field or is adjacent to the field the main line is utilized as a field track, harvested cane being loaded directly into cane cars spotted on the main line track. [59]

The cane is loaded on the cars by caneloading machines. These machines are caterpillar cranes weighing approximately 23 tons equipped with a 46-foot boom and a finger-like grab which pulls or grabs the cane loose from its growing position and loads it directly into rail cars. The machine is

operated by a 65-horsepower diesel engine. The cane grab operated by heavy steel cables consists of a number of tines capable of lifting approximately one to two tons of cane at one time. The machine moves on its caterpillar treads parallel with the portable track lines on which the cane cars have been placed. The Plantation owns nine of these caneloading machines. Four caneloading machines are normally assigned to each harvesting operation, there usually being two harvesting operations being performed on the plantation simultaneously; the remaining machine acts as a spare. Each machine has one operator and four ground crewmen for each of two 8-hour operating shifts per day. The four ground crewmen for each caneloading machine cut cane stubble and stack up loose cane falling from the grab. They give guiding signals to the operator, remove obstructions from the path of the machines and assist in minor repairs to the machine itself. The loading machine is sometimes called upon to assist in placing wrecked cars back on the field or main line tracks, and in such cases the ground crew constitutes the wrecking crew working with the operator. A service unit of one operator and a helper service all equipment each day. Lunch periods of the loading machine crews are staggered to permit servicing by the service unit without delaying the operation. Cane which is located in field corners, along fences, under transmission lines or which is otherwise [60] difficult or impossible to reach with the caneloading machine, is bulldozed into reachable piles by the rake and subsequently loaded into cars by the caneloading machine.

The caneloading machines are equipped with generator units supplying power for the operation of floodlights on the boom and the cab. The entire machine and the ground surface around the machine have sufficient light so that the efficiency of the night loading operations is equivalent to that of day loading.

During the interim period between the termination of the day shift work and the beginning of the night shift, service and repair men complete necessary repairs. During this time also the haul cane men, hereafter described, are able to remove the balance of the loaded cane cars out of the field, thereby permitting the locomotives to clear the side tracks and bring up empty cars for the night loading operations.

After cars are loaded by a caneloading machine, they are hauled from the field to the main line of the railroad (at the edge of the field) by tractors. Employees handling this operation are called the haul cane crew. Preparatory to the movement of the loaded cane cars, one man or more of the haul cane crew using a cane knife cuts off some overlapping or protruding cane. Two haul cane tractors then move into position. One tractor is coupled directly to the rear car, enabling the operator to push or hold back the entire string of cars as required by the gradient of the track. The second tractor couples up alongside the cars in the front half of the string by means of a cable and is also in position to push or to hold back the cars. The ground crew then mans the brakes on the cars, re-

leasing them to start loaded cars rolling, and thereafter releasing and applying brakes [61] as required to eliminate full load weights on the tractors.

Carloads average 4.75 tons per car gross cane. Cane trains may consist of as many as eighty to ninety cars, depending upon the grade or the steepness of the field. Cane trains average sixty cars. Movement of field loads are supervised by the haul cane supervisor and the supervisor in charge of the field, one taking charge of the front and the other the rear portion or half of the train load. They signal the hand brake operators and the tractor operators. The steady crew for this operation consists of the haul cane supervisor, two tractor operators and three brakemen on the day shift, with one tractor operator and two brakemen on the night shift. Tractors equipped with lights move empty cars into position for the night loading with the assistance of the brakemen.

A pickup crew consisting of two supervisors, two tractor operators, and twelve to sixteen ground crewmen pick up all cane pieces along the track, throwing the cane into carts drawn by tractors. Full carts are dumped near the loading machine. The crew also handcuts and loads cane from such parts of the field as the loading machine and bulldozer do not reach. When field pickup is completed they serve as ground crew men for a small diesel locomotive which tows empty cane cars along the main line from the field to the mill, picking up fallen cane. After the loading machines leave the harvested field, this crew cleans up remaining cane

loading it into cane cars pulled by a tractor. The crew also serves as a general utility gang acting as replacements for the other gangs or crews. [62]

14.

Railroad Transportation

From the time the Plantation was organized, and continuing to the present, the Plantation has owned and operated a narrow gauge railroad system. This railroad system is constructed, located and operated exclusively on the plantation. It hauls no cane or freight for anyone other than the Plantation. It is used predominantly by the Plantation for the purpose of hauling sugar cane from the fields of the plantation to the plantation mill. (Cane burned by accidental fires is sometimes hauled to the mill by truck if the tonnage is small.) It is also used to a much lesser extent to haul portable rails and other agricultural supplies and equipment from the plantation warehouses and shop yards to and from the fields. However, most of this latter type of hauling is handled by the plantation trucks operating over plantation field roads and also public roads.

The plantation railroad is also used for one other purpose at the present time. The Plantation has a spur track of approximately 3,000 feet in length running from its mill and warehouses and connecting with the railroad line of the O. R. & L. This spur track is used by the Plantation to deliver box and tank cars loaded with sugar and molasses to the O. R. & L. and to receive incoming plantation

supplies delivered to the Plantation by the O. R. & L. The O. R. & L. discontinued its operations at the end of the year 1947. Since that time the outgoing and incoming freight of the Plantation has been handled by an independently owned and operated trucking company. [63]

Attached hereto and made a part hereof is a map marked Exhibit "D" showing the location of the railroad lines composing the railroad network extending over the plantation. This railroad network consists of fifty-six miles of main line track and nine and thirty-four hundredths miles of portable track. Portable track laid in the fields is not shown on the map since it is installed only during the harvesting period and is then removed when harvesting is completed. Also omitted is a total of approximately twelve and one-half miles of line which is not permanent inasmuch as it is laid either biannually or annually on plantation roads.

Portable track laid in the field for harvesting operations lacks proper roadbed for the locomotives. The primary reason for the use of the portable track for harvesting is that permanent track cannot be laid in the field because of interference which would otherwise result in planting and cultivating operations. During the short periods when such track in the fields is in use it is an integral part of the railroad system over which cane cars move directly from the fields to the mill.

The plantation railroad equipment is as follows: Six 25-ton steam locomotives, one 17-ton steam locomotive, one 12-ton steam locomotive, one 12-ton

gasoline locomotive and one 14-ton diesel locomotive; two hundred steel cane cars, measuring approximately 11 feet by 6 feet by 5 feet, and five hundred and twelve wooden cane cars measuring approximately 10 feet by 6 feet by 5 feet.

Main line switches to portable track, a few of which are permanent, are installed at predetermined locations [64] along the main line for movement of empty cane cars into the fields to be harvested and return of the loaded cars. The number of switches used per field depends on the proximity of the field to the main line, its size, shape and terrain.

Empty cane cars are moved into the harvesting fields as much as possible at night with the night shifts of railroad crews. This allows the night harvesting field crews to spot empties for night and day loading operations free from interferences of outgoing traffic. Empty cane cars are moved into the harvesting fields during the daylight hours only as time and traffic permit or to meet a field exigency or to meet demands of the mill for additional cane. Loaded cane cars are hauled from the field to a main line track by tractors and thence to the mill by steam or diesel locomotives during daylight hours only. On the return from the mill available empty cars are moved to some point near the harvesting field. In this manner flow of traffic in and out of the harvesting fields is primarily one-way traffic.

Empty cane cars are often pushed by the locomotives directly onto the portable track. Locomo-

tives do not go onto the portable track, only to the field switch.

Loaded cane cars are moved part way onto the main line. The cars may be stationary or may be moving at the time connection to the locomotive is made. At places where a siding is convenient, the loaded cars may be moved onto the siding by field tractors.

Movement of trains to and from the mill is accomplished with a train crew of four men consisting of an engine driver, fireman, front and rear brakemen. Six to nine crews, with an average of seven, depending upon harvesting field locations, [65] are required daily to handle cane and incoming and outgoing freight. The yard engine, which operates during the day only, handles the incoming and outgoing freight, and assists with spotting and segregating incoming cane cars. Maintenance of a steady flow of cane cars to the mill is also the responsibility of a yard crew.

A crew of a diesel engine locomotive driver and one man sprays the railroad rights-of-way with a herbicide approximately every two weeks. The operation requires four days.

Employees known as section men maintain the main line trackage and keep it in good repair.

Picking up of cane spilled along the railroad rights-of-way requires two to three days per week with one locomotive and an average of twenty cars. The pickup crew consists of locomotive driver and one brakeman (diesel locomotive is used) together

with a crew of pickup men from the field of between six and twelve men.

One hostler and one engine wiper wash the locomotives and steam boilers, oil and grease the locomotives, fire the steam locomotives preparatory to the day's operations and assist in minor repairs to locomotives. This service work is performed in the plantation roundhouse.

Ten crossing watchmen are used to protect the public at government road crossings. Between the hours of 10:00 p.m. and 6:00 a.m., train crews are responsible for flagging all government road crossings. One man is used to dry and maintain a supply of dry sand for use by the locomotives. Another man is employed to keep the mill yard rights-of-way clean.

During the off season when cane is not being harvested, the section men are used in the repair and maintenance of [66] main line trackage supplemented by approximately twelve brakemen and five firemen. Watchmen are used for cleaning and weeding the rights-of-way. Usually one engine driver, two firemen and three brakemen are assigned to assist the electricians on mill work primarily. One fireman and two brakemen are generally assigned to the welding shop for assisting in off season factory repairs and installation of new equipment. Two more brakemen are sometimes assigned to boiling house repair work. One yard engine crew is maintained during the off season. The crew consists of engine driver and brakemen for the diesel locomotive. Engine drivers, not otherwise used, assist in locomotive repairs.

15.

Field Road and Public Road Transportation

The size of the plantation has necessitated the construction and maintenance by the Plantation of a network of field roads for the transportation of labor, field supplies and equipment throughout the plantation.

This network of roads is shown on the transportation map marked Exhibit "D." The main roads, as shown on this Exhibit, are publicly owned roads, paved and maintained by the City and County of Honolulu, or by the Territory of Hawaii.

Most Plantation-owned roads are dirt surface roads, maintained by the Plantation with its own diesel powered grader. A few roads have a top dressing of either sand, coral or crushed rock. Some Plantation-owned roads are paved.

These roads are used to transport plantation labor from the main plantation village situated around the plantation buildings and yard area out to the fields; some plantation [67] labor, however, is hauled from outlying villages to various fields. All this labor is hauled by truck.

Field supplies, such as concrete irrigation flumes, irrigation flume putty, fertilizer, cement, etc., are hauled from the plantation warehouses and yard area out to the various fields by 1½-ton to 7½-ton gasoline driven trucks. At times the plantation railroad may be used to haul some of the above supplies, especially when certain parts of the fields are more easily reached by railroad. Most of the time the fertilizer is loaded by hand directly from O. R.

& L. box cars onto trucks and then hauled to the fields. Cement and other supplies are loaded from warehouses by hand onto trucks. Concrete products, such as irrigation flumes, pipes, etc., are loaded from the plantation-owned and operated concrete products yard onto trucks by hand.

Herbicides are hauled in their original containers from a Plantation warehouse to nearby mixing station by trucks. After the herbicide is mixed, it is put into 2-gallon containers and trucked out to the fields in a one-ton truck. Tank trucks haul mixed diluted herbicide solution out and spray this on weeds located along roadsides, ditches, etc.

Cane seed is trucked on 2½-ton to 7½-ton trucks from the field in which the seed is cut into the fields where it is to be planted. This seed is bagged and loaded by hand.

All field mechanical equipment is hauled from field to field or to the shops on rubber-tired trailers drawn by trucks or a rubber-tired tractor. Heavy equipment, such as harvesting machines, plow tractors, cane rakes, bulldozers, etc., is hauled on a large 25-ton, 6-wheeled trailer drawn [68] by a 98-horsepower rubber-tired tractor. Light equipment, such as ratooning tractors and other light tractors, is hauled on a 2-wheel trailer drawn by a 2½-ton truck.

Fuel and servicing equipment for field power operated equipment, such as harvesting machines, tractors, air compressors, etc., is hauled out in tank trucks. Fuel for the two steam irrigation pumps is hauled in O. R. & L. tank cars from the O. R. & L.

siding to the pumps by Plantation locomotives on the Plantation railroad.

Sand is hauled from a Plantation-owned sand area in Waimea Bay to various parts of the plantation in 2½- to 7½-ton trucks. The sand is loaded mainly by crane and clamshell bucket, but is sometimes loaded by hand.

At times when there is a shortage of certain supplies at the plantation, trucks may go to Honolulu or any other part of the island to obtain them.

16.

Cleaning Cane

Locomotives deliver the loaded cane cars to the mill yard to be moved up to the cane cleaning plant where the cane is washed in preparation for conveyance into the mill. Locomotives bringing in cane cars may move the cars directly into position for unloading into the cane cleaning plant, if all cane cars delivered to the mill on the preceding day have been emptied during the night operations of the mill. One of the mill yard track lines leads directly into the cane cleaning plant and accommodates approximately one hundred loaded cars. An adjacent track line receives empty cars from the cane cleaning plant and accommodates about sixty cars. [69] During the night, loaded cars are moved up from the track sidings by a mill yard engine, since additional loaded cane cars are not delivered to the mill from the field during the night.

Time elapsing between the loading of the cars in the field and the unloading into the cane cleaning

plant may vary from four to sixteen hours. Time elapsing between the arrival of cane from the field to the mill yard and the unloading into the cane cleaning plant may vary from a few minutes to an hour during the morning. Cane delivered to the mill yard in the afternoon may not be unloaded until the following morning.

Cane once cut or burned undergoes an inversion process involving a chemical reaction of the sucrose, the sugar content of the cane, which transforms it into undesirable compounds. This reaction, commencing with burning and harvesting, continues with increased acceleration until the juice is chemically treated or concentrated in the form of syrup. Hold over of cane in cars in the mill yard will result in a substantial inversion factor. For this reason, harvesting activities and mill activities are closely coordinated to reduce to a minimum any hold over of the cane before crushing. Ideal conditions are those in which there is a complete continuity of movement of the cut cane, permitting direct and immediate delivery from the harvest field to the cane cleaning plant for cleaning preparatory to crushing.

The following table shows the progressive rate of deterioration of burned cane, whether standing or cut, when not milled and the resulting percentages of sugar losses: [70]

Days since burning or cutting	1	2	3	4	5
Burned, left standing	3.05	6.09	9.14	12.18	15.23
Burned, cut at once	2.84	5.69	8.53	11.38	14.22

Days since burning or cutting	6	7	8	9	10
Burned, left standing	18.03	20.83	23.63	26.43	29.23
Burned, cut at once	17.43	20.64	23.84	27.05	30.26

The purpose of the cane cleaning plant is to remove as much trash as is mechanically possible. Tramp iron and rocks passing into the mill rollers result in serious damage to the rollers and equipment, requiring shut downs for repairs.

Loaded cane cars are pulled into the cane cleaning plant by means of a heavy steel fork that engages the end car and the car line is pulled forward one car length at a time by means of an electric gear motor, sprocket and chain. As the string of loaded cars is hauled into the cane cleaning plant, each car is uncoupled as it goes onto a small railroad scale. Each loaded cane car is supplied with a ticket in a small metal pocket on the end of the car, the ticket having been placed there in the field at the time of loading. These tickets have the car numbers marked on them, together with information as to the field, the time and date the cane was burned, the date of loading and the cane variety. The scale man removes the ticket from each car and enters the weight while the car is on the scale. These tickets are collected and totaled hourly and are an important step in mill control. No washing or trash removal takes place prior to weighing the cars of cane.

After scaling a loaded car, the car is pushed onto the car dumper by the next car entering the scale. When it has come to a stop in the center of the dumper table with the front car axle against a stop, the cane cleaning plant operator clamps it down to the dumper table by means of [71] elec-

trically operated clamps which engage the car. The operator then unhooks the car side chains that hold the cane in the car. The electrically operated dumper table is tilted to an angle of sixty degrees and the cane slides out of the side of the car and into the tumbling conveyor, after which the operator lowers the dumper. The empty car on the dumper table is displaced by the next loaded car coming off the scale and rolls onto an electrically operated transfer car which carries it across to the empty car line. It is then pushed onto the empty line by a motor operated pusher and is manually coupled to the end car in the empty string, the car couplers being of the link and pin type.

The loaded car line is replenished at about two-hour intervals and empty cars are hauled away at one- to two-hour intervals.

The cleaning process is divided into three parts and starts in a tumbling conveyor. First, the cane bundle is tumbled on a steep carrier sixteen feet wide and about fifty feet long, consisting of pipes attached to a conveyor chain with one-half inch spaces between the pipes. Cleats are attached to the pipes to facilitate carrying the cane up the steep incline of this carrier. Stationary side plates prevent the cane from falling off the sides of the conveyor. The conveyor moves at a maximum rate of 180 feet per minute, but may be operated at any speed below this since it is driven by a variable speed motor. The cane comes off the cars in a tangled mass and the tumbling conveyor breaks up

the mass so that the cane is carried up the steep incline in a thin layer. Considerable amounts of dirt and fine trash fall through the carrier onto a drag conveyor below. When rocks are present [72] in the cane, the carrier is stopped after they have been shaken out of the cane mass and are rolled by hand off the lower end into a rock conveyor below. A gate at the lower end of the carrier is raised by means of an electric hoist during this operation.

As the cane leaves the upper end of the tumbling conveyor, it is dropped onto the lower end of a wash carrier. This wash carrier is sixteen feet wide and twenty-five feet long. Water is sprayed on the cane at the rate of about 2,000 gallons per minute as it is carried under three sets of nozzles placed over the upper portion of the carrier. This water washes the cane directly under the nozzles and cascades down through the cane approaching the nozzles. In this way, most of the mud and dirt is removed from the cane. This carrier is driven by the tumbling conveyor motor.

When the washed cane leaves the wash carrier, it is skidded down steel plates to leave stripping rolls. There are twenty-four pairs of these rolls which are in contact and turn toward each other. They are driven by six electric 25-horsepower gear motors and remove most of the leaves and trash from the cane as the cane slides over them. Very little cane is pulled through. Leaves and trash thus removed fall into a flume underneath the rolls, and this material is flumed away.

After leaving the leaf stripping rolls, the cane falls into the mill carrier, which transports it to the crushing plant. When rocky fields are being harvested, rocks find their way into this carrier and a watchman is kept at this station to watch for and remove them. The lower end of the mill carrier is in a cement lined pit six feet wide. [73] During bad weather when the cane is unusually dirty, water is sprayed on the cane in the lower portion of the carrier and the dirty water is pumped out of the pit.

Most of the mud and dirt from the cane is flumed with the wash water to low fields near the mill. Leaves and trash, removed by the stripping rolls, are flumed to a nearby motor driven three-roll mill where the material is ground fine and then dumped into the wash water flume for disposal.

Seven men per shift are required in the cane cleaning plant. One man uncouples the loaded cars as they come onto the cane scale. Another scales the cars. A third operates the electrical control board that activates the car haul, the car dumper, the empty car pusher, the rock and dirt carriers, the tumbling conveyor and the wash carrier. A fourth couples up empty cars. The uncouple man, the scale man and the couple-up man assist in removing any cane left on the cars after they have been dumped and in removing stones and foreign material from the tumbling conveyor. A fifth man is stationed at the wash carrier to see that no cane jams occur and to remove pieces of cane from the small drag carrier that screens the dirty wash

water. A sixth man serves as rock watchman on the mill carrier. The seventh man drives a rock and dirt disposal truck.

In addition to the seven men per shift in the cleaning plant, two men are required to work, on the day shift only, in the disposal fields, spreading the flumed ground trash and mud. [74]

17.

Chopping and Crushing Cane

Extraction of juice from the cane stalks is possible only when the cane cells and tissues are ruptured. This rupturing action can be advanced by shredding or chopping the cane with knives, and thereafter completing the extraction process by compression exercised between grinding rollers.

After the cane has passed through the cane cleaning plant, it is carried on a six-foot wide carrier to the crushing plant. Before entering the crusher room, the cane passes under a set of sixty-eight revolving knives bolted to discs on a shaft set across the carrier. The shaft is driven by a 125-horsepower motor. These knives serve to level the blanket of cane as it is carried up to the crusher. A similar set of knives is located at the top of the carrier. These knives chop up the cane as it leaves the carrier. From the mill carrier the chopped cane is dropped down a chute into the crusher rolls.

The crushing operation consists of a cane crusher and five mills arranged in tandem and extended about 136 feet.

The crusher consists of two rolls, 78 inches wide

and 39 inches in diameter. The five mills consist of three rolls each which are also 78 inches wide and have a diameter slightly less than the diameter of the rolls in the crusher. The three rolls in each mill are arranged horizontally with two rolls below and one roll fitting down on top. (The term "mill" is here used to refer to each of the five units of three rolls. As so used, the term should not be confused with its common usage in referring to the building in which the entire processing [75] operation is conducted. The term "crusher" is used to refer to the unit of two rolls which crush the cane and pass it on to the mills.)

The purpose of the rolls is to press the fibre and remove the juice contained therein. The fibre passing through the rolls is referred to as bagasse. One hundred per cent extraction of the juice is impossible due in part to the capillarity of the bagasse. Normally, 40 to 60 per cent extraction is achieved in the crusher rolls. The purpose of the succeeding five mills is to extract the remaining juices.

The crusher rolls are set horizontally with a 1" opening between the rolls. Bearings on the top roll are so arranged as to permit the top roll to rise slightly as the cane goes through. At the same time, hydraulic jacks are set in such a manner as to deliver the desired pressure on the crushed cane as it goes through. Flow of cane to the crusher is controlled by regulating the speed of the mill carrier. Juice squeezed out of the cane is collected in a sloped copper juice pan set below the crusher and the first mill rolls. This juice flows through a

screen and is flumed to a juice tank from which it is pumped to the boiling room.

The crushed cane passing between the crusher rolls is discharged directly into the first mill. Clearance between the front or leading bottom roll and the top roll in this mill is three-eighths of an inch. Clearance between the top roll and the back or discharge roll is one-fourth of an inch. Juice extracted in the first mill is collected in the same pan that receives the crusher juice. Approximately 70 per cent of the normal juice in the cane is extracted in the crusher and the first mill. [76]

The succeeding four mills are similar to the first mill, except that the rolls are set slightly closer together.

The crushed or ground cane is conveyed from one mill to the succeeding mills by means of an inclined closed chute. Before entering the last mill, hot water is applied to the ground cane. This resulting solution is squeezed out in the last mill and is collected in a conical copper pan under the mill, from which it is pumped to juice spreaders between the previous mills where it is spread on the crushed cane and again passes through the other mills, ultimately being collected in the one juice tank from which it is then pumped to the boiling house.

Approximately 96 to 97 per cent of the sucrose in the cane is removed in the milling process.

Moisture content of the bagasse averages 45 per cent. Fuel value is roughly equivalent to sawdust. All of the bagasse is burned under the boilers to generate steam for the processing of the cane and

to produce power for the various integrated operations of the Plantation as will be hereinafter explained. The bagasse is carried by an inclined drag carrier from the No. 5 mill to an overhead distributing conveyor in the fire room.

The mill and crusher rolls are driven by three steam engines totaling 1,400 horsepower. Since the crusher rolls turn at a different speed from the mill rolls while engines operate at a higher speed, a system of heavy gears supplies the proper reductions in power.

Eight motor driven centrifugal juice pumps are installed to pump the juices through the crushing and milling process and also to pump the mixed juice to the boiling room. [77]

Seven men per shift work in the crushing plant. Three engine tenders operate the three engines providing power for the crusher and the mills. By regulating the speed of the engines, the engine tenders can maintain an even feed through the crusher and mills in coordination with the feeding of the cane from the cane cleaning plant. One engine tender is in charge of the crusher and the mills and regulates the rate of operation. The second engine tender is responsible for repairs in the cane cleaning plant. The third tender is responsible for lubrication of the mill gear system. The fourth man in the crew acts as mill feeder, regulating the flow of cane to the crusher. The fifth man is the mill oiler, responsible for the oiling and greasing of the crusher and mill mechanisms, and also performs the oiling and greasing of the cane cleaning

plant. A sixth man is responsible for maintaining the pressures exerted upon the top mill rolls. He also watches the juice pans under the mill to prevent trash clogging and operates the juice pumps. The seventh man is a utility man, taking assignments as directed by the shift engineer.

In case of equipment failures, the engine tenders, assisted by other crew members, perform repair work under the direction of the shift engineers. Employees in the welding shop, machine shop and blacksmith shop, however, are called upon to do most of the repair work requiring welding or machining. All repair work required during processing operations to restart equipment must be handled immediately to avoid serious sugar losses in burned and harvested cane and in cane and cane juices being processed and to avoid costly mill cleaning operations. [78]

18.

Clarifying and Crystallizing

Clarifying of the juices extracted from the cane in the crusher and mills and the crystallizing into the raw sugar crystals are performed in the boiling house.

The raw cane juice from the crusher and mills is discharged from a flume into juice scales and is there weighed.

The juice is emptied from the scales into a receiving tank underneath the scales. Milk of lime solution is introduced into the juice and reacts upon the phosphoric acid to form a precipitate

which permits the removal of the foreign matter not in solution.

The mixture of juice and milk of lime is pumped from the receiving tank through a set of four horizontal tubular heaters which function in sets of two each.

The limed, heated juice is piped to the clarifier. This consists of a series of five trays, one above the other, in a closed tank. Scraper arms revolve slowly in this clarifier and the precipitated "mud" settles in the trays and is scraped to the side to flow to the bottom of the clarifier tank. The clean juice is drawn off through a pipe from each compartment formed by the series of trays. The clarifier, with its five trays, measures 28 feet in diameter and 30 feet in height.

The "mud" in the bottom of the clarifier is treated in a side process since it contains considerable sucrose and must be filtered to enable recovery. It is therefore pumped to a filter station. There it is first passed through a mixing tank where fine bagasse, pneumatically conveyed from the fire room, is added to the "mud" as a filter aid. [79] Three filters, consisting of rotating drums and acting on the vacuum principle, rotate in the solution of "mud" and bagasse, picking up a so-called "mud" cake on the surface of the drum which is then carried through several hot water sprays that wash out a large amount of sucrose, leaving a waste residue which is disposed of by means of a conveyor operating to a flume where it is washed out to a mill waste disposal yard. Washings from

the filter, although not clear enough to be added to the clarified juice, are pumped to the mixed juice tank for reprocessing as a part of the initial stage described above.

After passing through the clarifier, the clean juice flows to a supply tank from which it is pumped to the evaporator station. By evaporating out the water which holds the sucrose in solution, the juice of the cane is concentrated. This permits crystallization of the sucrose in the form of raw sugar. This concentration, performed after the elimination of as many impurities as possible in the clarifier, is begun in the evaporators, where the major water content is removed. The second stage, that which takes place in the vacuum pans, is the crystallization stage proper.

In the evaporation stage, the juice is pumped first to the pre-evaporator where low pressure steam is introduced in copper tubes jutting up into the liquid juice contained in the pre-evaporator. This causes the juice to boil and steam vapor is produced, collecting in the top of the pre-evaporator from which it is withdrawn for heating the vacuum pans (the secondary stage referred to above). The juice remaining in the pre-evaporator flows down to the bottom and then moves [80] into the first cell of the quintuple series of the evaporator, where the same process is repeated, and so on through the remaining four cells of the unit, the repeated process in each cell resulting in further evaporation. Each of the quintuple cells of the evaporator is

heated by the vapors withdrawn from the preceding cell.

After passing through the evaporator, the juice, now reduced to a syrup, is pumped to supply tanks at the vacuum pan station. Here the formation of sugar crystals occurs. There are five vacuum pans, each operated as an individual unit. They measure 10 to 14 feet in diameter and 15 feet in height. Each pan is capable of making thirty-five tons of raw sugar at a time. The vacuum pans are heated either by the hot vapors from the pre-evaporator or by low-pressure steam from the fire room. Removal of vapors in the process is accomplished by a central vacuum pump which also supplies the evaporators.

High grade and low grade raw sugar are produced. High grade raw sugar is always the final product while the low grade raw sugar is reprocessed to make high grade sugar.

Low grade raw sugar is drawn into one of the vacuum pans, into which the sugar syrup is then fed until the pan is full. This process requires approximately 2½ to 3½ hours. During this time the mixture of low grade raw sugar and syrup is boiling and the density is maintained at an optimum point which will allow the original sugar crystal to grow in size but not form any additional crystals. This condition is determined by the operator who removes and inspects small samples from time to time. After 10 to 12 hours, the completed batch, consisting of sugar crystals and molasses, is [81] dropped from the pan into a mix-

ing tank from which it is fed into centrifugal machines that separate the sugar from the molasses.

The molasses is then pumped back into the vacuum pans where it is mixed with syrup. The same process described above is then performed with this mixture to produce another grade of raw sugar, which is also classed as high grade, but not as high as the grade above described. The molasses resulting in this operation is lower in sucrose content. This molasses is the supply for obtaining low grade raw sugar.

Formation of low grade raw sugar is accomplished by the same boiling process, differing only from the making of high grade raw sugar in that no sugar crystals are introduced as a foundation but the molasses is concentrated to the point where spontaneous crystallization occurs. The process is then checked, and additional molasses is gradually fed into the pan at a controlled rate which will result in the growth of the crystals formed rather than formation of additional crystals. This feeding process continues for six to ten hours. This mixture, is then dropped into an open cylindrical tank having a capacity of 850 cubic feet. These tanks are called crystallizers. There are sixteen in use. After two to three days in process the material is pumped into a mixing tank from which it is fed into low grade centrifugals.

The centrifugal station consists of nineteen low grade and seven high grade centrifugal machines. These machines consist of rotary baskets suspended on a spindle and lined with perforated copper

screen. They revolve at a high rate [82] of speed by a direct connected electric motor, and the centrifugal force throws out the liquid material into a curb from which it is flumed to a storage tank while the sugar crystals remain on the screen. They are removed by a mechanical scraper moving vertically along the surface of the screen. The low grade centrifugal machine operates for a period from 45 to 75 minutes, depending upon the quality and amounts of material on hand. It is then stopped, the sugar removed, and the cycle repeated.

Since no further extraction of sugar is possible, the low grade molasses remaining is an end by-product. During 1946, an average of 460 tons of molasses a week was obtained which amounted to about 3.4 per cent of the weight of the net cane processed or approximately .26 ton of molasses per ton of raw sugar. This molasses is pumped to a storage tank with a capacity of 1,300 tons and from this storage tank it is repumped into railroad tank cars for shipment to and sale in the continental United States. A very small percentage is sold locally for cattle feed. The percentage so sold averages 500 to 600 tons per year.

Low grade sugar removed from the centrifugals is mixed with water and pumped to the vacuum pans for use in the process described above.

The high grade sugar centrifugals are similar to the low grade machines except that they are driven by a high pressure water jet and the drying cycle is only 3 to 4 minutes. The dried sugar is removed from the centrifugals to an adjoining

sugar bin preliminary to bagging. The boiling house employs a total personnel of 45, including the boiling house superintendent and three shift [83] foremen.

19.

Sugar Bagging and Shipping

The raw sugar flows from the bin through an automatic scale which weighs out a 100-pound load, and dumps it into a chute at the neck of which the operator has attached a hemp bag. The entire operation occurs in timed sequences automatically upon the closing of a switch. The released bag of sugar is carried out by a conveyor through a sewing machine head where the bag opening is sewn, and the bagged sugar continues on the conveyor to a railroad car for loading and shipment to the continental United States or to the sugar warehouse on the plantation for temporary storage.

There are two sets of scales, baggers and sewing machines with one operator each. Each set handles about seven bags of sugar a minute. At the present time the bagging station is operated for two 8-hour shifts with two operators on one shift and one operator on the second shift. An average of 275 to 300 tons per day is bagged at this station. This represents the average daily raw sugar production of the mill.

20.

Work Schedules of Mill Employees

Production in the mill operations is keyed basically to a six-day week with continuous and around-the-clock operations, the mill stopping the

grinding of cane at 2:00 p.m. on Saturdays and starting up at 2:00 p.m. on Sundays. The 24-hour day is divided into three 8-hour shifts running from 6:00 a.m. to 2:00 p.m., 2:00 p.m. to 10:00 p.m., 10:00 p.m. to 6:00 a.m. [84]

21.

Week-End Repair of Mill

The weekly 24-hour shutdown period of mill is necessary to perform cleaning and repair operations. The filter screens must be cleaned out with a traveling steam jet which takes about 45 minutes per filter and is performed by the regular shift operator. The juice heaters must be opened up, the tubes steamed for half an hour, and then brushed to remove the loose scale. Considerable scale forms in the tubes of the evaporators and after the last juice is removed on Saturday afternoon the tubes are washed out with water and a continuous spray of caustic soda solution is applied for 5 to 6 hours. Then muriatic acid is added and boiled, the cells cleaned out with water and opened in preparation for the scraping and brushing operations. The vacuum pans are also boiled out with a weak acid solution and the tubes brushed manually whenever necessary. The oilers and repairmen also do the necessary work on the various pieces of equipment that can only be accomplished while they are idle.

Over the week end two shift crews clean up and make such repairs as are necessary in the crushing plant and cane cleaning plant. Engine tenders are responsible for mechanical jobs in such plants. They are assisted by the remaining crusher room men and

the operators and scalemen from the cane cleaning plant. Mill oilers are occupied in greasing up the equipment in the cane cleaning plant.

While, in general, repairs are performed during the week end, every effort is made to anticipate week-end requirements and the various shops located near the mill perform as much work as possible while the mill is in operation. [85]

22.

No Non-Plantation Cane Processed by Mill

All of the cane processed by the Plantation mill is produced on the Plantation and by the Plantation.

23.

Sugar Warehousing

Under normal operating conditions the bagged sugar after leaving the mill is loaded directly into the railroad box cars for shipment. Due to the limited number of cars and storage space at the port wharves and occasional interruptions in ship schedules, the sugar may be stored temporarily from time to time in the plantation sugar warehouse. But even this sugar is normally removed within a month's time and the warehouse is usually empty at the end of the grinding season. During the last five year period there were two years in which no sugar was stored in the plantation warehouse. Raw sugar is never stored at the plantation because of price, market or other economic considerations. The most efficient and profitable operations call for shipment to mainland refineries immediately upon production.

When stored in the sugar warehouse, the sugar bags are carried by a long belt conveyor from the room in the mill where they are weighed and filled to one end of the sugar warehouse building. From here they drop in a chute to a series of portable conveyors which carry them to any part of the building where they are stacked in piles. Additional help is needed in performing this piling operation and two men from the field force are temporarily transferred to assist the regular pilers. To remove the sugar bags to rail cars [86] for shipment a crew of six or seven men is obtained from the field as the regular men are usually occupied in handling the current production.

In addition to sugar, all of the empty sugar bags, in bales of one thousand to six hundred bags each, are stored in the warehouse. These are charged out as they are removed to the mill for use. Due to a shortage of warehouse space, fertilizer is also stored in bags in this building from time to time.

24.

Fire Room and Power Production

In extracting the juices from the sugar cane, one of the by-products is the cane fibre from the cane stalks, which is referred to as bagasse. When dried, one ton of bagasse has a fuel value approximately equivalent to two barrels of fuel oil. As indicated above, the extraction of the juices from the cane fibre and the processing of sugar cane into raw sugar require large amounts of power for the operation of the prime movers, conveyors and pumps.

It is therefore traditional in sugar cane processing to utilize the bagasse as an economical source of fuel for the production of power for use in performing the various processing operations. An average of approximately three thousand tons of bagasse is produced each week when the mill is operating at full capacity. Fuel is also essential in the processing operations for the production of steam for heating and evaporating of the juices and the crystallization of the sugar. Fuel is also used to produce steam for the generation of electric power needed in the various operations of the plantation, as will be hereinafter more fully described. If the bagasse were disposed of [87] as waste, other fuel would have to be obtained in order to obtain steam. If the bagasse were not utilized as fuel, a difficult disposal problem would be presented because of its bulkiness and the large volume involved. Bagasse produced by the plantation has no marketable value.

The Plantation attempts to save and store enough bagasse during the week to meet the requirements for operating the boiler furnaces on the week-ends when cane is not being ground. Sufficient quantities of bagasse are not always available to satisfy the fuel requirements of the mill. This condition occurs during periods of breakdown of machinery and during periods of wet weather when harvesting and processing operations are slowed down by reason of heavy trash contents. The boiler furnaces are therefore equipped to burn fuel oil which is stored

in a concrete fuel oil tank located in the mill yard near the fire room for convenience of supply.

The fire room of the mill is located adjacent to the crusher room. It houses seven water tube boilers. Boiler feed pumps and two condensate pumps are housed at one end of the fire room and are used to supply water. A condensate tank is located in the mill yard area adjacent to the fire room. Fuel oil pumps and a fuel oil heater are also located in the fire room area for use when fuel oil is being burned.

Furnaces used in burning bagasse are set in front of the boilers in the fire room. The bagasse is fed into the furnaces through chutes connecting with the bagasse conveyor from the crusher room. Fuel oil burners are installed in the back of the boilers and the oil is burned directly below the boiler tubes.

Steam is generated at an average rate of approximately 150,000 pounds per hour when the mill is operating at a maximum capacity. Steam lines lead from the fire room to the crusher room where steam is used to drive the mill engines which in turn drive the crusher rolls and the mill rolls. Exhaust steam from these engines is piped to the boiling house for direct use in the processing operations.

Another steam line from the fire room leads to the power room for generation of electric power by a turbo-generator and two steam engine driven generators. Steam enters the turbine at a pressure point of approximately 150 pounds and after conversion of the initial energy in the steam into electrical energy by the generator, bled steam, now

carrying a pressure of approximately 10 pounds, is piped to the boiling house for use as process steam supplementing the steam exhausted from the mill engines. Steam is also exhausted from the engine driven generators into the process steam line in an identical manner with the exhaust steam from the mill engines.

The automatic bleeder valve on the turbo-generator is the main control point for maintaining the pressure in the process steam line at a given amount. A drop in pressure in the process line will indicate insufficient process steam for the boiling house requirements, in which case the turbine bleeder valve opens automatically, thereby increasing the flow of steam to the process line to maintain the necessary pressure for boiling house operations. On the other hand, if the pressure in the process line increases above normal, the bleeder valve then closes proportionately, thereby restricting the flow of steam to the process line and returning the process line pressure to normal requirements. [89]

Another steam line from the fire room supplies steam to the steam driven auxiliary units in the boiling house, and still another leads to the boiler pump room to operate the boiler feed pumps.

Returning condensate from the power room and boiling house is heated, together with any required make up water by exhaust steam from the boiler feed pump engines. If there is an excess supply of returning condensate, this flows into the boiler feed water tank outside the fire room.

Seven men per shift work in the fire room with the addition of two boiler cleaners on the day shift. The water tender is the fire room foreman and is under the supervision of the shift engineer. He directs the fire room men and also sees that the water in the boilers is maintained at the proper level at all times and that the feed water regulators are working properly. It is his duty to blow down the boilers at intervals to keep the solids in the boiler water below safe operating limits. The fire room oiler assists the water tender, takes care of the pumps, oils the carriers and bagasse feeders, operates oil burners if required and assists in shoveling bagasse when the mill stops. Two firemen regulate the flow of bagasse to the fires and regulate draft with dampers to maintain steam pressure. They also watch the water columns on the boilers. Three ash and trash men clean the furnaces, distribute bagasse in the bagasse storage space as required and shovel trash from the stock pile into the reclaiming conveyor when the mill is stopped. Two boiler cleaners work on the day shift only. Besides cleaning boilers they take care of minor repair work in the fire room. Except for a few pumps, there is no duplicate equipment. Generally three shifts are used in the fire room for week-end repairs. [90]

25.

Generation and Distribution of Electric Power

As set forth before in connection with the production of steam power in the fire room, the electric power generating equipment of the Plantation is located in the mill. It consists of one 6600-volt

generator driven by a steam turbine and two 440-volt generators driven by reciprocating steam engines.[4] The electric power generated by this machinery is generated from steam produced in the boilers, which passes through the generating machinery and is then conveyed through steam lines for use in the processing operations in the boiling room.

Electric power generated is not sufficient to supply the needs of the Plantation. For the purpose of supplementing the power generated, electric power is purchased from the Hawaiian Electric Company, Limited, an independently owned and operated public utility, on the Island of Oahu. During the period 1941-1945, inclusive, power generated in the Plantation system represented 64-6/10 per cent of the amount consumed. The remaining 35-4/10 per cent was purchased from the Hawaiian Electric Company. The following table represents

POWER GENERATED AND PURCHASED
(Kilowatt-Hours)

Year	Power Generated	Net Purchased	Total
1941	13,920,751	6,298,328	20,219,079
1942	12,107,338	4,252,311	16,359,649
1943	11,910,190	6,842,133	18,752,323
1944	13,362,393	8,540,695	21,903,088
1945	13,087,887	9,236,272	22,324,159
Average	12,877,712	7,033,948	19,911,659
Percentage Average	64.6%	35.4%	100%

[4]The Plantation also has a hydro-electric plant, known as the Kemoo Plant, located on the upper side of the Plantation. This plant has not been operating since 1943 and is completely shut down for an indefinite period.

a breakdown of this power generated and [91] purchased:

The power generated and purchased by the Plantation is distributed to the mill, field irrigation pumps, repair shops and related buildings, domestic water pumps, plantation houses and services and to several small non-plantation users living in the plantation community who, because of their location, cannot be conveniently served from the present transmission lines of the Hawaiian Electric Company. The electric transmisison lines representing the distribution system of both the Plantation and the Hawaiian Electric are shown on the map attached hereto as Exhibit "E."

For the years 1941-1945, inclusive, the use of the electric energy distributed by the Plantation in the terms of percentages was divided as follows:

For mill, shops and related buildings	36.3%
For plantation irrigation pumps	47.4%
For plantation domestic water pumps	3.9%
For sundry use	12.4%

The power distributed for sundry use includes power distributed to plantation houses for lighting, electric ranges, water heaters and other electrical appliances; to streetlighting, club houses, gymnasiums, playgrounds, bath houses, plantation store and branches, and a hospital; and to several non-plantation retail stores and service establishments, churches and houses all situated in the general plantation community. The total amount of power used by all non-plantation persons was less than 1% of the total power distributed by the Plantation for the years 1941-1945, inclusive. The various per-

centages of use set forth for such years are substantially true today [92] except that the distribution to non-plantation users in the community is now approximately ½ of 1% of the total power distributed by the Plantation because these users are constantly being absorbed by the Hawaiian Electric as it extends its transmission lines. None of the electric power distributed to non-plantation users by the Plantation is used for or in connection with the production of goods for interstate commerce, nor is it used to operate any instrumentality of interstate commerce nor is it transmitted into interstate commerce.

As indicated before, for the purpose of obtaining additional power from the Hawaiian Electric Company, the Plantation system is tied into the former system throughout the year. As a consequence, on rare and infrequent occasions the Plantation will feed back power into the Hawaiian Electric Company lines. The feed back into the Hawaiian Electric lines occurs when the electrical load of the Plantation is small and the steam is great. Under these conditions the Plantation may generate more power than it uses. This situation may occur on week ends when the mill is closed down and the mill requirements are slight or completely absent or it may occur at periods when some field irrigation pumps have shut down. Power is not fed back to the Hawaiian Electric lines for the purpose of selling power but only because it is a necessary, convenient and economical method of disposing of the excess power. To avoid feeding back power in the situation described would be costly and imprac-

tical as it would either require a complete resetting of the plantation generators to produce less power (which would necessitate [93] the closing down of the power plant) or it would require expensive machinery which would synchronize the generation requirements with the required power load of the Plantation.

The times of the feed back are infrequent, irregular and unpredictable and the Hawaiian Electric has no need for such power in this area.

A chart showing the total amount of power purchased from Hawaiian Electric and the total credit allowance for feed back in dollar volume is set forth for the years 1941 to August 31, 1946, inclusive.

Year	Total Dollar Volume of Power Purchased from H. E. Co.	Total Dollar Credit Allowances for Feed Back from H. E. Co.
1941	$65,320.42	$ 602.12
1942	51,965.41	1,286.88
1943	74,362.23	2,377.54
1944	92,129.41	1,023.36
1945	106,339.01	288.20
1946 Aug. 31	56,163.51	431.63
	$446,279.99	$6,009.73

Operation of the mill power plant requires one operator and one auxiliary tender per shift. One mill maintenance electrician is needed for the shift from 2:00 p.m. to 10:00 p.m. and one for the shift from 10:00 p.m. to 6:00 a.m. Electricians from the electric shop also are on call for necessary repairs. During the off season the turbines, steam engines, generators, motors and auxiliary equipment in the mill are overhauled and reconditioned and during

such period the Plantation generates no electric power but purchases all of the power which it needs from the Hawaiian Electric Company. [94]

26.

Service Shops

Both field and mill operations necessitate the equipping and maintaining of complete service shops for prompt minor repairs and emergency work and major overhaul. Machinery breakdowns in the mill may result in a shutdown of the entire mill which, in turn, necessitates a discontinuance of harvesting and transportation operations until mill repairs are complete. Breakdown of harvesting machinery or of cane transportation facilities in turn may result in a shutdown of the entire mill. Repair shops are located in an area extending not more than 300 feet from the mill building. The location of the various service shops is shown on the map attached as Exhibit "F" which is attached hereto and made a part hereof. A list of the shops and the work which is performed by their personnel is as follows:

(a) Machine Shop. This shop is staffed by eight employees working under the supervision of a machine shop foreman. Practically all the machining work of the Plantation, except heavy work required by the mill, railroad and shops, is done in the machine shop. The grinding of crankshafts for cars, trucks, tractors and cranes and the machining of emergency parts for such equipment is also performed here, as well as machine work on irrigation

pumps. Major locomotive repairs are made by machine shop personnel working with a heavy crane in the welding shop.

Approximately 46 per cent of all machine shop work is for the mill. Fifty per cent of the annual machine shop work is for other service departments, including repairs to steam engine driven irrigation pumps. During the off season, [95] mill work done by the machine shop accounts for 85 to 90 per cent of the total man-hours' work performed. Work in this shop is fairly uniform throughout the year with peaks in case of emergency mill repairs and during the mill off season. Locomotive overhaul is carried out to a limited extent during the grinding season to relieve machine shop off season work. Steam engine driven water pumps are scheduled for overhaul after the mill overhaul has been completed and after grinding operations are resumed.

A large portion of the work done by the machine shop personnel is performed within the shop, utilizing shop tools. Shop personnel are, however, from time to time called into the mill, on instructions from the cane processing superintendent, for repairs, regrooving of mill rolls and such other work as cannot be expeditiously handled by mill workers.

The tools of the machine shop include lathes, hydraulic press, drill press, planer, boring machine and crankshaft grinder.

(b) Welding Shop. Five employees work under the welding shop foreman. Approximately 46 per cent of welding shop work is for the mill. During the off season, welding shop work for the mill

represents approximately 90 per cent or more of the total man-hours. Most of the welding repairs to mill equipment are made in the shop, although personnel are dispatched to the point of breakdown on instructions received from the cane processing superintendent. Steel cane car repairs are made alongside the shop building by the shop personnel. The welding shop employees also operate pipe rolls located in the pipe rolling shed. The pipe which is rolled is generally irrigation pipe, 18" in diameter or larger. [96] Welding of this pipe is performed by the shop welders. In this work the welding shop employees are assisted by employees from the blacksmith or cane loading machine repair shop.

Welding shop equipment consists of heavy pipe rolls, several sets of acetylene and cutting outfits, acetylene generators, two stationary and portable welding generators.

(c) Blacksmith Shop. The blacksmith shop is located adjacent to the mill building. Personnel consists of two blacksmiths and two helpers under the supervision of the Cane Loading Machine Repair Shop foreman. Approximately two days each week are spent by two blacksmiths and two helpers on mill work, consisting principally of constructing and reconditioning of cane carrier leveling and preparation knives. Cane car repair work, such as straightening of bars and channels, repair of tractors and caneloaders and field implement work occupy the great percentage of the man-hours in the shop. Work of this shop is therefore uniform throughout the year.

Equipment of this shop includes two forges, an electric operated hammer and a variety of small tools.

(d) Tinsmith Shop. Personnel consists of a tinsmith journeyman and two employees. In this shop mill repair work is negligible, although light sheet steel work, including maintenance and repair of roof gutters and down pipes, is performed by the shop personnel. Repairs of auto, truck, tractor and caneloader radiators are performed by the shop personnel. Main work of the shop is the making and reconditioning of tin irrigation scoops. These scoops are used in quantity in the field for the purpose of deflecting water from concrete irrigation flumes to field irrigation lines. [97]

(e) Cane Loading Machine Repair Shop.[5] Personnel consists of twelve employees under the supervision of a foreman. This shop performs all major repairs and overhaul of caneloaders, grabs and miscellaneous field equipment. Men from this shop are occasionally called upon to assist in the emergency mill repairs. They also go into the field to make repairs on caneloading machines during the course of harvesting operations. An important function of this shop is the construction of auxiliary field equipment, such as subsoilers used in plowing, cane line reshapers used to maintain irrigation water lines in the field, and portable track line leveler attachments used in leveling the lines for laying portable tracks.

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[5]On Exhibit "H" some of the work of this shop is carried under the title "Mechanical Harvesting Department."

Repairs on such auxiliary field equipment are also made in this shop with the assistance of tractor repair shop personnel.

During the off season at least eight of the nine caneloading machines are completely dismantled and reconditioned. The ninth machine is reconditioned after harvesting operations have been resumed. During the off season following the completion of harvesting, ten to twelve caneloading machine operators are brought into the shop to supplement the regular crew and assist in overhaul. Five cane grabs are overhauled and reconditioned during the off season and all other cane grabs are repaired. Three new cane grabs are usually built during the harvesting season.

Shop equipment includes four portable welding generators and three portable welding generators mounted on trucks for field repairs. A hydraulic press, overhead crane, motor driven grinders and a variety of small tools complete the shop [98] equipment.

Four welders in this shop take care of welding repairs in the field and repairs to and building of new field equipment.

(f) Tractor Repair Shop. Employees in this shop number seven, supplemented during the off season by twelve to fifteen tractor operators brought into the shop from the fields to assist in repairs. All tractors used in the harvesting field are overhauled in this shop during the off season. Tractors used for towing cane line reshapers are also overhauled during the off season. Other tractors which

cannot be overhauled during the period of off season are scheduled for overhaul at a later date. This may mean that six or seven of a total of forty-eight tractors are left for operating season overhaul. Tractor engines are overhauled at regular periods.

Shop men may be dispatched for repairs of tractors in the fields. As indicated above under (e) personnel from this shop also assist in the repair of field implements in the caneloading machine repair shop.

(g) Garage. Combined garage and field service personnel numbers 24. The primary work of the garage is the maintenance and repair of 98 plantation vehicles divided as follows: 18 passenger vehicles; 48 pickup trucks up to one ton; 27 heavy trucks from 1½ to 7 tons; one motorcycle; 2 fire trucks and 2 panel trucks. These vehicles are assigned to the various operations as follows:

	Passenger Vehicles	Pickup Trucks	Heavy Trucks	Motor-cycles	Fire Trucks	Panel
Field	5	39	20			
Shops	2	3	6	1		
Mill	1					
Hospital	1					
Store						2
Administration	7					
Fire Trucks					2	
Motor Pool	2	6	1			
Total	18	48	27	1	2	2
Grand Total						98

Overhaul of cars and trucks is scheduled throughout the year with the exception of pickup trucks used by the harvesting men which are overhauled during the off season. Truck drivers are not used to assist in truck or auto repairs since there is generally a spare truck to drive when others are

being repaired. Shop equipment consists of 4 overhead cranes, a hoist, valve grinding machine, brake drum lathe, boring machine, tire tools and a variety of special tools.

Complete servicing equipment with necessary personnel is also maintained. Seven full-time and one part-time employees are employed to lubricate and wash plantation automobile vehicles at stated intervals. One employee dispenses gasoline and oil at the yard service station. Six employees are employed as helpers to garage mechanics when there is no service work.

Field service covers the daily lubrication of all equipment and replenishing of fuel tanks. Tractors, caneloading machines, portable air compressor, diesel and gas locomotives and all field equipment are serviced daily by a total of 6 men. Two completely equipped service trucks manned by two men each service all field equipment except that in the harvesting fields. In the latter case, a two-wheel trailer, tractor drawn, is kept in each of the two harvesting fields. Oil, gasoline, diesel oil, greases and water are carried on the trailer together with power operated grease guns. One man assigned to each trailer services the cranes and tractors in the harvesting fields. In this way service work can be done during the lunch hour and slack periods without serious interference to harvesting operations. The field men in turn are given an opportunity to learn the operation [100] of loading cranes during their spare time with an opportunity when a vacancy occurs of moving up to a crane operator's job.

(h) Electric Shop. A total of 15 employees works in this shop. Three of these employees are mill electricians who work two weeks in the mill and one week in the shop. This shop is responsible for the maintenance of electric pumps and transmission lines, domestic wiring repairs, including wiring of houses, and the building of new electrical appliances. A small amount of work is done on electrical machines located in the other shops. In addition to mill repair work done by the employees assigned as electricians to the mill, the electric shop personnel may assist them in case of major electrical repairs required. Approximately 50 per cent of the work in this shop is for the mill. During the off season, approximately 70 per cent of all work is for the mill.

(i) Carpenter Shop. Employees in this shop number 25 carpenters under two supervisors. The carpenters perform all carpenter work on the Plantation which includes the construction of mill scaffoldings, construction and maintenance of railroad trestles and wooden gates for flumes, and the construction and maintenance of cane cars. In addition, they perform necessary maintenance work on plantation buildings and houses. The carpenters also install and maintain steel and concrete pipelines and siphons. Miscellaneous construction, such as construction of tool lockers, scrapers and strainers, is performed in this shop. Field work, including work on the flumes, railroad trestles, siphons, pipelines, etc., accounts for about 25 per cent of the work of the employees. Mill scaffolding and mill

building repairs, construction of tool [101] lockers, scrapers and strainers account for about 10 per cent. Maintenance and repairs of plantation buildings and housing account for about 45 per cent. Approximately twenty per cent of the work performed by these employees is devoted to the construction and repair of cane cars. During the off season, the work of the employees in this shop is similar to that in the grinding season. Additional men, averaging from 10 to 15, may be brought in from the fields to assist in cane car overhauling and general carpentry work during the off season.

(j) Paint Shop. This shop employs five painters under one supervisor. They perform all painting work on the plantation buildings including housing and also occasionally paint siphons and railroad trestles. As a general rule, they do not paint for the mill, this work being done by mill employees. Almost the entire time of the paint shop crew is devoted to painting of plantation buildings and housing throughout the year. During the off season, an average of two additional employees brought in from the fields may assist in the work of this shop.

(k) Plumbing Shop. This shop employs six plumbers working under one supervisor. They perform all plumbing work on the Plantation, including the construction and maintenance of sewer and water systems and the plumbing for buildings and housing. Approximately 10 per cent of the time is devoted to mill plumbing work, 15 per cent to field work and the remainder to housing. Assignments

vary little throughout the year. During the off season an average of two field employees may be assigned to the plumbing shop as helpers. [102]

(l) Roundhouse. Two employees work in this shop servicing, cleaning and firing the plantation locomotives. Additional employees are occasionally assigned to this shop for minor locomotive repairs. It is located near the machine shop.

27.

Laboratory Tests and Sampling

Various chemical tests are made by the laboratory personnel in the course of all field and mill operations. This work is performed under the supervision of a chief chemist with the assistance of thirteen chemists, testers and samplers. By careful analyses of various kinds performed relative to the cane and materials in the course of growing, cultivating and harvesting and extraction of the sugar juices, all operations are controlled pursuant to scientific methods.

Determinations of the cane fiber in each field, or variety of cane, are made during each shift. Figures obtained are used in calculating bagasse weights, field distribution and extraction percentages.

Cane leaf analyses is made from samples of cane tops brought in each day and analyzed for green weight mixture, total sugars, nitrogen, potash and phosphate.

Tests are made each day to determine field trash content in harvesting brought to the mill. One car

is selected each day for each field being harvested. The car is tagged in the field, placed on side track and then delivered to the mill area. The car is then weighed and the clean sound cane is piled in previously weighed empty cars. Then the car of clean cane and the car from which the dirty cane was removed are weighed and the percentage of trash obtained. Percentage of trash obtained is used in obtaining the net cane from each [103] field and also the gross cane ground. A check upon cane field yields is maintained in this manner.

Continuous samples are taken from the feed roller of the first mill each hour and also at each change of field harvesting. Records of ratios of cane to available sugar are obtained from these analyses.

Juices extracted by the milling process and entering the boiling house are sampled every hour. Samples obtained are the main basis for determining the sugar in the cane extracted by the milling process and entering the boiling house.

The juice extracted by the discharge roll of the last mill is used in calculating the weight of the bagasse.

One sample is taken every three hours from the clarified juice leaving the clarifier. The difference in purity between this sample and the mixed juice samples will show the relative amount of solids being removed by the lime and heat treatment of the juice.

The purity of the syrup leaving the evaporator is checked with the juice leaving clarifier.

Samples of bagasse are taken every two hours

and ash determinations are also made on two samples per day to determine the influence of the different fields on the fire room.

Mixtures of sugar and molasses discharged by the vacuum pans are tested from each full discharge from the pans. Samples are made daily of low grade sugar, commercial raw sugar and waste molasses. The residue removed from the juice during the clarification process is made once during each shift. The purpose of this analysis is to determine the amount of sugar lost in the filter cake.

Test is also made of the mill boiler water, locomotive boiler water, steam pumps boiler water and pump water. Pump [104] water from electric pumps and well water are sampled once each month. Wash water from the cleaning plant and condenser water are also analyzed each shift.

28.

Concrete Products Plant

The Plantation operates its own concrete products plant which is located on plantation lands adjacent to the plantation buildings and yard area. At the present time, six men are at work in this plant although the number varies from 4 to 10 men. Work ordinarily is performed on a single shift basis, but if extra men are working, two shifts may be maintained.

This plant is engaged primarily in producing concrete irrigation flumes and water supply pipe. It also makes some blocks, footings, sidewalk slabs and other various incidental concrete products re-

quired by the Plantation. Crushed rock used in the manufacturing process is purchased locally, while 80 to 90 per cent of all cement used is obtained from the mainland. The work consists of setting up forms, mixing and pouring concrete, removing the previous day's products and arranging them in storage. Cement used is stored in cars which are set on the siding near the plant, or the cement is stored in the cement shed as part of the inventory of general supplies warehousing. In the latter case, unloading of cement is done by the warehouse personnel. Various activities requiring the flumes, pipe and other products receive them direct from the storage area where the products are stored.

The operations do not have any off season. During the off season, however, additional personnel may be brought in from the fields. In 1946, the plant produced approximately 46,000 concrete pieces, including flume sections, pipe and other products. [105]

29.

Storage of Plantation Supplies

Materials and supplies purchased for plantation operations are warehoused or stored in several separate buildings located in the plantation buildings and yard area. Value of supplies on hand averages $500,000. The total value of goods procured during a year including stock and special order materials averages slightly over $1,000,000.

Most of the materials received are shipped to

the Plantation from Honolulu on the O. R. & L. Purchases may be either local or by order and direct shipment from continental United States. Freight received is placed in the proper warehouses by the warehousing personnel. In almost all cases railroad sidings permit placement of the O. R. & L. cars next to the warehouse receiving the materials. The warehousing personnel is not responsible for, nor does it engage in, delivering materials to the various operations or shops.

The principal buildings in which the supplies and materials of the Plantation are stored are the general supplies warehouse and the heavy supplies warehouse. They house electrical goods, building hardware, paints, window screening, tractor and caneloading repair parts, copper tubing, pipe stock, metal shapes stock, galvanized sheeting, steel sheets, and many other items.

The oil storage warehouse houses lubricants and a limited amount of paint.

Gasoline, fuel oil, diesel oil and kerosene are discharged directly from the O. R. & L. tank cars into storage tanks.

Most of the automotive parts and tractor, caneloading and miscellaneous parts are stored in the garage. [106]

Cement is stored in a separate warehouse. Lime is stored in the mill in the lime room after being unloaded by warehousemen.

Lumber is stored in the open lumber yard adjoining the general supplies warehouse. Herbicides are also stored here.

Fertilizers are usually trucked directly from railroad cars to the field as needed; but if temporary storage is required, they are placed in the sugar warehouse.

The warehousing operations are handled as one unit under a warehouse superintendent with 13 employees. Five clerks perform the bookkeeping and handle accounts. The remainder of the warehouse personnel is employed in the unloading and storing of stocks and materials, keeping stock record cards and taking inventory.

30.

Main Administration Office

The location of the main administration office is shown on Exhibit "A" and is about fifteen hundred feet from the plantation buildings and yard area. The manager, assistant manager and staff assistants have their offices in this building. The general accounting office, which is located in this building is administered by the office manager. Employees of the accounting office consist of the cashier, bookkeeper, head timekeeper, six assistant timekeepers, eight subsidiary ledger clerks, five stenographers and typists, or a total of 22 employees working under the Office Manager and Assistant Manager. Four of the timekeepers are engaged in keeping time of field employees. The remaining timekeepers keep time of the shop, store, mill, hospital and village maintenance employees. Pay roll [107] records are maintained and salaries and services paid. In addition to this, the accounting office accumulates

the customary cost data and prepares the usual financial statements.

The civil engineer has his office in this building and has under him one assistant surveyor, two junior surveyors and two rodmen, all of whom work alternately in the field and also maintain offices in the building. One draftsman also works in this office. The agriculturist and also the industrial relations section are located in the same office building.

31.

Stables

The Plantation has one main stable near the plantation buildings and yard area. It uses 38 horses and mules. Horses are used in the fields by the harvesting overseer to ride in the fields. Pack mules are used upon occasion to pack seed, fertilizer, broken concrete flumes and other things in and out of the canefields. The Plantation has several feeding stations for horses and mules where they are kept temporarily while work is being performed in a particular area. Three employees are assigned to this work.

32.

Off Season

For efficient operations sugar mills of the Territory must be closed down annually for general repair and reconditioning because of the heavy wear and tear on mill machinery and equipment. That part of the year when the mill is shut down for repairs is termed the "off season." Because of the little variation in climatic and weather conditions

from month to month, sugar cane is grown the year around in the Territory and can be [108] harvested and milled any month in the year—and frequently is. The amount of sugar recovered per ton of sugar cane, however, varies somewhat throughout the year and is highest during the months of May, June and July.

The variation during the year in the ratio of sugar recovery per ton of cane has some influence on the time selected by a plantation for closing down for annual repairs. The selection of the off season is also influenced by wet weather which may make it more difficult to move harvesting machinery in the fields and to burn the leaves from the cane. Exhibit "G" attached hereto and made a part hereof is a date schedule of the off seasons for all plantations in the Territory from 1940 to 1945, inclusive. While it will be seen from this Exhibit that some plantations harvested and milled cane each of the months of the year sometime during this six-year period and that the duration and particular months of the year embraced in the off season differed considerably between the plantations, the majority of the plantations selected their off season sometime during the months of October, November, December and January. Operational difficulties, labor problems, shortages of equipment and other factors frequently make it impossible for a mill to close down during the season when operations are most disadvantageous. For example, the sugar industry of the Territory was on strike from September 1, 1946, to November 19, 1946. As a result of this

strike, most plantations of the Territory milled sugar cane during the month of December of that year.

The length of the off season for the sugar industry in the Territory averaged from 2½ to 3 months per year from 1940 to 1945, inclusive, as shown by Exhibit "G." But for the Waialua Agricultural Company, Limited, it averaged approximately three [109] months per year for this period, the dates of which were as follows:

Schedule Showing "Off Season"

Year	From	To
1941	Aug. 30, 1941	Jan. 26, 1942
1942	Oct. 6, 1942	Jan. 22, 1943
1943	Oct. 1, 1943	Jan. 17, 1944
1944	Sept. 12, 1944	Jan. 9, 1945
1945	Oct. 3, 1945	Jan. 15, 1946

During the off season for the Territory, there are no harvesting, ratooning, cane transportation, or cane processing operations. All field operations other than harvesting, ratooning and cane transportation continue throughout the year.

33.

Mill Repairs During the Off Season

During the off season extensive repairs are necessary because of severe operating conditions in the mill. In the cane cleaning plant most of the conveyor chains run without lubrication in acid water and mud. Stones brought in with the cane damage carrier flights and damage steel plates in carriers.

Wet, acid conditions corrode plates and these are replaced when they become thin. Stripping rolls and stripping roll bearings wear out. Chain sprockets wear rapidly because of corrosion and abrasion and are replaced. Bearings are rebushed or babbitted and in some cases shafting is replaced. Improvements and changes are often necessary. Only during a shutdown period can extensive repairs and alterations be made.

In the crushing plant the mills have to be completely dismantled and worn rolls regrooved or replaced. All turn plates and roll scrapers are replaced. The mill gearing has to be taken apart, inspected and repaired. Worn carrier plates and chains are replaced. Bad piping is fixed and all pumps are [110] overhauled. If these repairs were not done annually, shutdowns would be frequent and excessive losses would be incurred.

In the fire room the tubes in all the boilers are turbined once a year. At this time the drums are scraped and painted and the boilers are inspected by an engineer representing the insurance company with whom the boilers are insured. Extensive repairs to the boiler brick work are usually necessary. Carriers, pumps and valves are overhauled. Piping is inspected and changed where necessary.

Most of the off season repair work is done by the men who operate the mill during the grinding season. All welding is done by men from the welding shop and machine work is done in the plantation machine shop by the machine shop crew except the heavy machine work which is performed in an

independently owned and operated shop in Honolulu. The plantation blacksmith shop is called upon frequently and the carpenter shop and electric shop occasionally.

The mill engine tenders do the more important repair work with the assistance of others. Minor repair jobs are assigned to the oilers. The mill feeders chip the cross grooving in the mill rolls. The cane cleaning plant men work as helpers and scale and paint the steel work in the cane cleaning plant.

In the fire room the oilers, firemen and boiler cleaners turbine the boiler tubes and clean the boiler drums. Brick work is generally done on contract by independent contractors, with the fire room trashmen handling all the materials under the direction of a water tender. Pipe work and carrier repairs are generally done by the water tenders and the boiler cleaners.

Off season work is generally commenced on a three-shift basis. It is necessary that parts going to Honolulu for repairs [111] be sent in as soon as possible. Since the crusher room crane is required in taking the mill apart, it is in great demand to start out with and too much time is lost if all the men work on one or two shifts. In the fire room it is necessary to get ahead with the tube cleaning and drum cleaning as fast as possible so the boilers may be inspected. As the off season progresses and the work is spread out, it is practical to go on a two-shift and finally a one-shift basis.

The average number of man-days of work performed during each twenty-four-hour period during the off season is 116, irrespective of whether the work is on a three-shift, two-shift, or one-shift basis. This is precisely the same as the average number of man days of work performed in the mill during each twenty-four-hour period during the grinding season, when all work is on a three-shift basis. All mill employees are employed on a forty-eight-hour workweek during the grinding season and the off season.

34.

Mechanization and Improved Management

The reduction of man-days required to produce ton of raw sugar, including all operations from the field to the mill, inclusive, is illustrated by the following table, showing the number of employees working for the Plantation, the total tons of raw sugar produced, the man-days required per ton of raw sugar and the total acres under cultivation, at 5-year intervals from 1910 to 1945, inclusive: [112]

Year	Number of Employees	Tons of Raw Sugar Produced	Man Days Per Ton of Sugar	Total Acres Under Cultivation
1910	2,726	30,870	21.2	9,889
1915	2,489	30,697	20.8	10,291
1920	1,824	28,284	19.8	10,622
1925	2,444	29,832	20.7	9,244
1930	2,516	49,981	10.4	9,884
1935	1,619	50,580	8.06	8,573
1940	1,237	57,841	6.9	9,565
1945	951	56,193	4.9	9,415
1946 (9/1)	1,144	——	—	——

From the above it can be seen that the number

of man-days required to produce a ton of raw sugar in 1910 was 21.2, while in 1945 it was reduced to 4.9 man-days. This reduction in the man-days required to produce a ton of sugar was brought about through mechanization, improved management and the application of scientific methods in irrigating, weeding, plowing, planting, harvesting and the processing of sugar cane into raw sugar. To a great extent hand labor and the use of horse-drawn agricultural equipment and vehicles have been eliminated and motorized equipment substituted in their stead. A few examples will serve to illustrate this.

(a) Up to the year 1936 there was little mechanization in the harvesting operation. The cane was all cut and loaded by hand and much of it was hauled from the fields by mule teams which drew the cars over portable rails to main lines of the railroad. In the year 1937 the use of large mobile crawler type cranes with finger-like grabs was introduced to pull or grab the cane loose from its growing position in the field and load it directly into rail cars, eliminating the necessity for practically all hand cutting and loading. In 1945 a mechanical portable rail lifter was introduced for the lifting and laying of portable rails in cane fields, thus eliminating a substantial amount of hand labor. Mechanization in harvesting alone has [113] reduced the number of men required by the Plantation in these operations from 500 in the year 1935 to 132 in the year 1946.

(b) In the year 1910, 240,600 10-hour man-days

were used to irrigate approximately the same area which was irrigated in 1945 with 20,069 8-hour man-days. This saving in manpower was due to gradual improvements in technique and the introduction of a highly scientific flume irrigation system which not only reduced the man-days needed for irrigation but greatly increased the cane yield per acre.

(c) For many years the weeding of the cane fields was done by hand with a hoe, but for the last few years most of this has been eliminated by applying herbicides to weeds by knapsack sprayers, which has resulted in a substantial reduction of the man-hours required in this operation.

(d) In the year 1910 most of the dead leaves on the cane stalks were stripped from the cane and taken out of the fields by hand preparatory to harvesting. This hand labor was finally eliminated in its entirety when it was discovered that the leaves could be removed by burning the cane in the field without injury to the cane or the soil.

(e) A saving of a substantial amount of man-days was also effected in the mill during the last ten years by the introduction of automatic juice scales, semi-automatic sugar bagging equipment, power-driven stirrers for mixing lime in the cane juice, automatic lime control and continuous mud filterers, a continuous clarifier and bigger centrifugals and the fluming of fire room ashes and mud press directly out of the mill into an adjacent [114] field.

35.

Relationship of Cane Production to Cane Processing in Terms of Direct Operating Expenses and Hours Worked

Attached hereto and made a part hereof is Exhibit "H" showing the total direct operating expenses of the Plantation for the calendar year 1945, itemized according to the various categories of operation. This Exhibit is a true and accurate copy of a record of the Plantation which was the basis for a return filed with the Bureau of Internal Revenue by the Waialua Agricultural Company, Ltd., on March 1, 1946, showing direct operating expenses of the Plantation for the twelve (12) months ended December 31, 1945. Included within the direct operating expenses are all charges for direct labor, materials, electric current, engineering, certain equipment and all other direct service charges as classified and listed on such Exhibit.

As shown by this Exhibit, the total direct operating charges for the calendar year 1945 were $1,726,278.24. Of this amount, $1,230,393.63 was for cultivating, irrigation water supply, harvesting, transporting of cane and other general field expenses and $495,884.61 was for operating and repairing the mill and purchasing sugar bags.

Thus, approximately 71 per cent of the direct operating expenses for the production of a single ton of raw sugar in 1945 was for cultivating, irrigating, harvesting, transportation and general field expenses as tabulated on the Exhibit, while 29 per cent was for mill expenses and repairs during

the grinding season and during the off season, and for sugar bags, also as shown on the Exhibit. [115]

This Exhibit also shows the total number of hours of direct labor attributable to the sugar operations of the Plantation for the calendar year 1945, which was 1,332,679.50. Of this number, 1,024,876.25 hours were for cultivating, irrigation water supply, harvesting, transporting and other work relating to field operations while 307,803.25 hours were for operating and repairing the mill.

36.

Plantation Villages

At the time the Waialua Agricultural Company plantation was organized, there was no established community having housing or other services or facilities for living in or near the area which it proposed to devote to the production and processing of sugar cane, to accommodate the employees whom the Plantation needed for its operations. As a consequence, it became necessary for the Plantation to construct houses, develop services and otherwise build up and establish facilities for permanent living on the Plantation to serve the needs of the required number of plantation employees and their families. The Plantation did this over a period of years and established a perquisite system under which employees of the Plantation received housing, housing maintenance, water, fire wood, and kerosene fuel, electricity, medical care, recreational facilities and various maintenance services, including garbage disposal and street cleaning, as a part of their

regular compensation. The principal plantation community was established around the plantation buildings and yard area as shown on Exhibit "A" and came to be known as the village of [116] Waialua.

After the Plantation was established and continued to operate, there gradually grew up an independent commmunity which is now known as the village of Haleiwa, which is located off the edge of the plantation a little more than a mile from the village of Waialua; and in addition, many non-plantation and independently owned and operated stores, shops, restaurants, service establishments and public schools and churches made their appearance on the Plantation itself in and around the village of Waialua to serve the needs of plantation employees and their families living in the area.

By the collective bargaining agreement dated November 19, 1946, between the Plantation and the International Longshoremen's & Warehousemen's Union, Local No. 145-7, which is attached hereto as Exhibit "B," acting for most of the non-supervisory employees of the Plantation, the perquisite system was abolished for all such employees, the value of the perquisites previously allowed to employees being converted into cash wages by the employer and the employee in turn paying cash for facilities and services being furnished him by the Plantation, except as set forth in paragraph 91 of this Stipulation. The schedule of rent being paid the Plantation for the occupancy of houses was worked out by collective bargaining with the union

and is a part of the bargaining agreement. No employee covered by the existing collective bargaining agreement, including each and every employee defendant herein, is required as a condition of employment to live on the Plantation or in plantation houses or to use any service or facility which the Plantation may be in a position to render its employees. The relationship which exists between the Plantation and its employees who live in plantation houses [117] is that of landlord and tenant. Employees of the Plantation as heretofore are continuing to render services and perform maintenance work on plantation houses and village areas.

At the present time the Plantation owns 820 houses, all of which are located on the Plantation. Most of them surround the plantation buildings and yard area and together with the business establishments of the community constitute the village of Waialua. Approximately 335 houses, however, are scattered over the Plantation, some of this latter number being clustered and forming field villages. The houses are of frame construction, each house having a yard in front and yard area in the rear which is used for chickens, vegetable gardens or such other purposes as the employees may desire. The lot area for each house may vary from 3,000 square feet to 4,500 square feet or more. The houses face on roads or streets.

On the basis of a census which was completed June 30, 1946, the 820 houses on the Plantation were occupied by 3,373 persons, 2,952 of whom were employees and pensioners of the Plantation and

their families. The remaining 421 persons living on the Plantation and in its houses were lessees and their families who were not employed by the Plantation and who either worked off the Plantation or who owned, operated or were employed by independently controlled businesses within it. As of June 30, 1946, there were also 16 employees working on the Plantation who lived off the Plantation and in houses not supplied or owned by it.

Waialua village has all the physical and visual characteristics of an established community and is similar to a typical small village or town of a farming community center. The area [118] is crisscrossed with government roads and also roads constructed and maintained by the Plantation. This Plantation community offers the usual services and typical commercial establishments to be found in any small town or village. It has ten (10) general stores, two (2) restaurants, two (2) fish markets, one (1) candy store, one (1) hardware store, one (1) clothing store, four (4) barber shops, one (1) beauty shop, one (1) photographic studio, two (2) automotive service stations, two (2) motion picture theatres, one (1) bank and other service establishments, all of which are non-plantation owned and independently operated; a retail store with two (2) branches, an automotive service station and a hospital owned and operated by the Plantation for both plantation employees and their families and non-plantation persons; and one (1) post office, one (1) public library, five (5) churches, one (1) intermediate and one (1) high school and one (1) day-care

center operated as a part of the Territorial School System. There is also existing in this general area of the Plantation two (2) gymnasiums, one (1) club house, one (1) swimming pool, two (2) tennis courts, one (1) athletic field and one (1) beach house, all of which were constructed by the Plantation and are available to an Athletic Association, the membership of which is composed of both plantation employees and other persons in the general community, which operates these facilities through dues collections.

The village of Haleiwa is a small business and residential community which is made up of privately owned residences and typical small retail and service establishments. Haleiwa caters to plantation employees and to surrounding community residents, who include persons working at other locations on the Island of Oahu and residents of numerous beach houses and Army and Navy [119] personnel using beach recreational facilities. To some extent the village of Haleiwa has become integrated with the village of Waialua with common fire protection equipment and public police patrol officers serving both communities.

Attached hereto and made a part hereof is Exhibit "I," a map showing the location of Waialua village, field villages of the Plantation, Haleiwa village, and independently owned houses, stores, and commercial establishments situated in and about Waialua village, together with the plantation roads and public roads of the area.

37.

In those instances in the foregoing numbered paragraphs 1 to 36 of this Stipulation where certain activities and operations of the Plantation have been described by facts and figures covering a period of time prior to November 20, 1946, to September 14, 1947, it is agreed that such facts and figures represent a substantially true and accurate description of such activities and operations during the period from November 20, 1946, to September 14, 1947, unless the context otherwise indicates. [120]

Part II.

Description of the Work and Duties of Defendants As Employees of Plantation

38.

Paragraphs 39 to and including 80 hereof set forth, with respect to the several defendants herein, the workweeks worked by such defendants during the period from November 20, 1946, to September 14, 1947; the hours worked by them in each such workweek and in each day of each such workweek, the compensation paid to them, both straight time pay and overtime premium, for work in each such workweek; a description of the work done by them during each such workweek, and other related data. Each of said paragraphs 39 to and including 80 hereof deals with one of the defendants, whose name appears in the heading of the paragraph. All of the work performed by each defendant, as set forth herein, was performed as an employee of the Plantation.

The work and duties of each defendant during said period were performed in connection with and as a part of the plantation operations described in Part I of this Stipulation, and for the benefit of the Plantation, except in so far as it may be expressly indicated in this Part II that certain minor portions of the work of some of said defendants was performed for the benefit of some person other than the Plantation. Certain additional data relating to the work and duties of the defendants are set forth in Part III of this Stipulation. [121]

45.

Tsuruo Hayashi

Caneloading Machine Operator

* * *

Workweek February 24-March 2, 1947, inclusive

* * *

48 hours in this workweek were spent in operating caneloading machine in cane fields and 3 hours were spent in repairing caneloading machine #306 at caneloading machine repair shop.

* * *

Workweek March 10-16, 1947, inclusive

* * *

49 hours in this workweek were spent in operating caneloading machine in cane fields and 2 hours were spent in repairing caneloading machine #306 at caneloading machine repair shop. [221]

* * *

Workweek May 19-25, 1947, inclusive

* * *

47 hours in this workweek were spent in operating

caneloading machine in cane fields and 4 hours were spent in repairing caneloading machine #306 at caneloading machine repair shop. [225]

* * *

Peter Holmberg
Locomotive Driver
Explanatory Notes

General Explanatory Notes:

All of the work of this employee during the period from November 20, 1946, to and including September 14, 1947, as above set forth in this numbered paragraph, was performed on the Plantation.

* * *

During the off-season during the period first above mentioned, said off-season being from December 2., 1946, to February 9, 1947, railroad department employees generally, including this employee, worked on a day shift which extended from 6:30 a.m. to 3:00 p.m. with ½ hour off for lunch. [291]

* * *

Hatsusuke Sera
Section Hand on Permanent Tracks
Explanatory Notes

Except as otherwise stated below, the work performed by this employee during each workweek of the period from November 20, 1946, to and including September 14, 1947, and the only work performed by him during each such workweek, was the following: repairing railroad tracks of the main line of the plantation railroad by replacing worn equipment such as rails, spikes and ties; cleaning

and lubricating switches on said main line; maintaining rights of way of said main line by weeding, cutting koa, etc.; grading and leveling uneven sections of trackway of said main line; installing and removing field switches for connecting said main line to cane field portable track lines; assisting in clearing train wrecks and rerailing derailed locomotives and cars; and otherwise repairing and maintaining said main line.

The only other work performed by this employee during the period above referred to was the following:

Workweek February 17-23, 1947, inclusive:

8 hours of this workweek were spent in laying temporary main line of plantation railroad on plantation roadway adjoining harvesting field.

Workweek February 24-March 2, 1947, inclusive:

8 hours of this workweek were spent in laying temporary main line of plantation railroad on plantation roadway adjoining harvesting field.

Workweek April 7-13, 1947, inclusive:

8 hours of this workweek were spent in acting as flagman to direct traffic at railroad crossing of main line of plantation railroad.

Workweek April 21-27, 1947, inclusive:

8 hours of this workweek were spent in cleaning plantation reservoir located on plantation property and used for storing water to irrigate plantation cane fields.

Workweek April 28-May 4, 1947, inclusive:

40 hours of this workweek were spent in cleaning plantation reservoir located on plantation property and used for storing water to irrigate plantation cane fields. 8 hours of this workweek were spent in loading railroad ties on freight cars in mill yard—said ties being ties previously purchased by the Plantation and having been sold as an accommodation for use by Kahuku Plantation Company, another plantation.

Workweek July 14-20, 1947, inclusive:

16 hours of this workweek were spent in acting as flagman to direct traffic at railroad crossing of main line of plantation railroad. [304]

Workweek July 21-27, 1947, inclusive:

16 hours of this workweek were spent in acting as flagman to direct traffic at railroad crossing of main line of plantation railroad. 8 hours of this workweek were spent in laying temporary main line of plantation railroad on plantation roadway adjoining harvesting field.

Workweek August 25-31, 1947, inclusive:

8 hours of this workweek were spent in acting as flagman to direct traffic at railroad crossing of main line of planation railroad. [305]

* * *

Part III.

Additional Data Relating to Work and Duties of Defendants

* * *

94.

Retail Store

References have been made in this Stipulation to a retail store with two branches which was operated by the Plantation during the period from November 20, 1946, to September 14, 1947. Said retail store and each branch thereof was during said period a retail establishment the greater part of whose selling was in intrastate commerce.

Dated the 30th day of August, 1950.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Plaintiff,

By /s/ RUFUS G. POOLE,
By /s/ LIVINGSTON JENKS,
By /s/ ERNEST C. MOORE, JR.,
Its Attorneys.

CIRACO MANEJA, ET AL.,
Defendants,

By /s/ RICHARD GLADSTEIN,
Their Attorney. [806]

EXHIBIT B

Contract Between
Waialua Agricultural Company, Limited
and
International Longshoremen's and
Warehousemen's Union
Local 145, Unit 7

Dated February 25, 1947

This Agreement, by and between the Waialua Agricultural Company, Limited, hereinafter called the "Company," and the International Longshoremen's and Warehousemen's Union, Local 145, Unit 7, hereinafter called the "Union."

Witnesseth

Whereas, more than a majority of the employees of the Company under and subject to this agreement have associated themselves together in the Union and have designated the Union as their sole and exclusive representative for the purpose of collective bargaining with the Company, and

Whereas, the Company has heretofore recognized the Union for the purpose of collective bargaining on behalf of the said employees under and subject to this agreement, now therefore it is agreed as follows:

Section 1

Duration of Agreement

Except as otherwise provided herein, this agree-

ment shall become effective November 19, 1946, and shall remain in effect until August 31, 1948. It shall be deemed renewed thereafter from year to year unless either party hereto gives written notice to the other party hereto of its desire to amend, modify or terminate the same, which notice shall be served not more than seventy-five (75) days nor less than forty-five (45) days prior to said expiration [810] date, in which event negotiations shall begin within fifteen (15) days from date of notice. This agreement is further subject to reopening by either party solely on the question of wage adjustments upward or downward once between August 1, 1947, and September 30, 1947, inclusive, on thirty (30) days' written notice by either party, and further subject to reopening on the questions of wages, classification, or hours once between February 1, 1948, and March 31, 1948, on thirty (30) days' written notice by either party. In the event these interim reopenings are exercised, negotiations shall commence within ten (10) days from date of notice. In the event of such reopening and failure to agree the parties shall be free to strike or lock out, but solely on the questions of wages or wages, classifications or hours, depending upon the particular reopening. Otherwise, all provisions of Section 14 shall remain in full force and effect.

Notices served under this section shall be accompanied by the proposals of the notifying party.

Section 2

Agreement May Not Be Amended Except by Written Document

The parties realize that not infrequently, after agreements similar in part to this agreement have been executed one party thereto will contend that the other party has at some time during the term of the agreement orally agreed to amend, [811] modify, change, alter, or waive one or more provisions of the agreement, or, that by the action or inaction of such other party, the agreement has been amended, modified, changed or altered in some respect. With this realization in mind and in order to prevent such contention being made by either party hereto, insofar as this agreement is concerned, the parties have agreed and do hereby agree that no provision or term of this agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto.

Section 3

Employee Coverage

The only employees covered by this agreement are those employees of the Company in Units Nos. 1 and 2 while employed in the jobs, the holders of which were eligible to vote in the election conducted by the National Labor Relations Board, and those agricultural employees in Unit No. 3 while employed in the jobs filled by persons whose names appeared on the agreed cross check list of em-

ployees, excluding in every instance, however, those employees employed in the jobs the holders of which were not permitted to vote in said election and all employees whose names did not appear on the agreed cross check list and all employees having the right to hire, fire, promote, demote, transfer, discipline or change the status or wage rate of any employee or effectively recommend such action and [812] further excluding minors who have not reached their 16th birthday, and students.

It is understood and agreed that there may be some change in the coverage with respect to employees who have been heretofore excluded as supervisory or who, although supervisory, have been included, such changes to be as the result of agreements based upon the application of the attached Exhibit "A."

Section 4

Discrimination

(a) The Company will not attempt to intimidate or coerce any employee into refusing to join the Union and will not discriminate against any employee because of his membership in the Union or for legitimate Union activity. Such activity, however, shall not interfere with the Company's operations; nor be conducted during working hours (unless expressly provided for by this agreement).

(b) The Union agrees for itself and its members that neither it, its representatives or members will

attempt to intimidate or coerce any employee of the Company for the purpose of compelling any employee to join the Union.

(c) In accord with the policies of the Company and of the Union (as contained in its Constitution) it is agreed that neither party will discriminate against any employee on the basis of race, creed or color. The Union undertakes to see that the [813] right of employees to submit questions arising under this paragraph to the grievance machinery of the agreement shall be so exercised and limited as to assure that it will not be the basis for creation of inter-racial problems or dissension.

(d) The Company will not discriminate against the Union or its members by action based upon favoritism toward non-union employees in the granting of premium rates, allocation of housing, promotions, transfers, the application of the classification sys'em, or the conferring of special privileges.

(e) Any claim by the Union that action of a non-union employee is disrupting the harmonious working relations in the plantation or is intended to undermine the Union may be brought to the attention of management by the Union for review, but shall not be subject to the grievance machinery or arbitration.

Section 5

Seniority

In making lay-offs and recalls after lay-offs and in making promotions or transfers, employees'

length of continuous service will govern where all other relevant factors (such as merit, experience, knowledge, ability, physical and mental fitness) are relatively equal.

When job vacancies occur which are to be filled by promotion or transfer of employees within the bargaining units, notice [814] of such job openings will be posted on the Company bulletin board seventy-two (72) hours prior to their being filled on a regular basis in order to afford employees who desire to be considered therefor an opportunity to signify their interest at the place designated and on the forms provided by the Company within such seventy-two (72) hours period.

All eligible employees of the Company will be considered in filling such job openings, but any employee who fails to file for the opening may not claim to be aggrieved when the opening is filled.

Any grievance arising over transfer or promotion shall be subject to the first four steps of the grievance procedure set forth in Section 19 of this agreement, but it shall not be subject to arbitration if it is not disposed of at Step 4 and the decision and judgment of management shall be final.

This principle of seniority shall not apply to any employee until he shall have completed six (6) months of continuous service with the Company.

Continuous service shall be considered broken by (a) discharge, (b) resignation, or (c) six (6) consecutive months of unemployment. The six (6) months' period may be extended by mutual agreement.

Section 6

Wages and Classification

The job classification plan and wage schedule (Exhibit C) become effective [815] November 19, 1946. All employees covered by this agreement will be classified in accordance with the provisions outlined in the Job Classification Manual. All employees' rates will be brought to the rate of their respective grade levels but in no case will an employee receive an increase of less than 25 cents per hour over his previous rate, subject, however, to the provisions of Section 7.

Employees paid on piece-work or production incentive basis will have their pay increased by 25 cents per hour for each straight time hour worked and by 37½ cents per hour for each overtime hour worked subject, however, to the provisions of Section 7. If the increases are worked into piece rates the conversion will be subject to Union approval.

Rates of pay of handicapped and superannuated employees will be established individually provided the parties hereto can come to a mutual agreement. Failing mutual agreement such employees may be dismissed. Such employees, if retained, shall be increased as of November 19 in an amount not less than 25 cents per hour.

After the effective date of the job classification plan and after wage increases as herein provided for, no further wage increases shall be made or otherwise effected, except within the provisions of

the job classification plan, or as provided under Section 1 hereof. [816]

Production incentive and piece-work plans of compensation will be maintained. The Company may, however, develop alternative production incentive and piece-work plans during the life of this Agreement, with the understanding that if such plans are equitable and better adapted to operating conditions they will become operative if mutually satisfactory.

Grievances Over Classification. If any employee or if the Union alleges that an employee is improperly classified by claiming that such employee by reason of his duties is, in fact, performing assignments other than the job classification to which he is allocated, such allegation shall be subject to final determination through the grievance procedure provided in Section 19 of this Agreement.

No allegation, however, that any classified job has been improperly allocated, or that such classified jobs should be allocated to different labor grades than that assigned and described in the Job Classification Manual, shall be subject to the grievance procedure under this agreement. It is also agreed that the job classification system as contained in the Manual shall not be subject to change through reference to the grievance procedure or arbitration.

Section 7

Conversion of Perquisites and Minimum Guarantee

Simultaneously with the installation of new wage

rates as provided in Section 6, all [817] perquisites will be eliminated and employees will be charged for rent and other perquisites in accordance with the attached Exhibit "E." Each individual who is paying rent will have his monthly rental divided by 208 and if the resulting amount, subtracted from his per-hour increase, leaves him less than the following guarantees, his rate will be increased by the amount of the difference.

Status	Minimum Net Guarantee
Single	19.0 cents per hour
Married	20.0 cents per hour
Married, 1 Dependent	21.0 cents per hour
Married, 2 Dependents	22.0 cents per hour
Married, 3 Dependents	22.0 cents per hour
Married, 4 Dependents	23.0 cents per hour
Married, 5 or More Dependents	23.5 cents per hour

Dependents shall be defined to mean the following persons living on the plantation: (1) children under sixteen (16) years of age, (2) children under eighteen (18) years of age who are attending school, and (3) aged and infirm persons who are recognized as dependents by the plantation.

The family and dwelling status and regular wage rate of each employee will be determined as of November 19, 1946, and his regular rate will be adjusted as of such date to reflect the guarantee so established. Subsequent changes in his family or dwelling status will not affect his wage rate. New Hires will not receive the minimum guarantee but will be hired at the classified rate. [818]

In determining the rental amount for the purpose of applying the minimum guarantee unmarried persons renting separate quarters will be charged rentals applicable to such quarters.

In the case of family dwellings occupied by more than one plantation wage earner, the rental of such dwelling for the purpose of the above computation only will be apportioned equally among such regular wage earners.

In the case where a house is occupied both by plantation wage earners and one or more non-plantation wage earners who are paying rent to the plantation for such occupancy, the amount of the house rent to be charged the plantation wage earner for the purpose of the above computation only shall be reduced by the amount of the former rent collected from the non-plantation workers.

It is understood that the rentals for family dwellings are subject to possible adjustment up or down on the basis of the conclusions and recommendations of the appraiser or appraisers in accordance with Exhibit F. Pending such adjustment, the rental charge to any employees affected by the minimum net guarantee will be temporarily fixed at a maximum of 10 per cent below the appropriate rent figures shown on the rental schedule and the employee's premium rate fixed accordingly, subject to adjustment on the final determination of [819] rentals by the appraiser at which time both the rent and wage rate will be adjusted in accordance with said determination.

Section 8

Temporary Transfers

(a) Any employee subject to this agreement may be temporarily transferred to another classification or may be used for the relief of employees under other classifications. If so transferred to a lower rated classification, whether at the beginning of or during a shift, he shall receive his regular classification rate or personalized rate whichever is higher. If so transferred to a higher rated classification, whether at the beginning of or during a shift, he shall receive the rate applicable to said higher classification while so transferred commencing with the nearest time interval customarily used by the Company for timekeeping purposes for at least the balance of the shift.

A transfer made for the convenience of a transferred employee (except employees temporarily incapacitated by reason of an industrial accident) shall not be deemed a temporary transfer irrespective of the duration of the transfer.

The Company agrees that except in the case of emergencies every effort will be made to administer the provisions of this section in such manner that demands made upon transferred employees for physical effort will not be excessive in comparison with their usual duties. [820]

(b) When an employee in a bargaining unit is temporarily transferred to a higher rated job which is not included in a unit, the question arises as to

the wage rate the employee should receive while holding the job to which temporarily transferred. To determine the wage rate the Company will take into consideration the following:

(1) If it is ascertained that the transferred employee, in fact, assumes and exercises all of the duties, authority and responsibility of the job, he will be paid the established minimum wage for the job. The transferred employee is not entitled to receive the personalized rate of the permanent employee which is the result of length of service and merit increases.

(2) If it is ascertained that the transferred employee assumes only part of the responsibilities, duties, authority and responsibilities of the job, Management after consideration of all factors will determine a fair wage rate for the temporary assignment, which shall not be less than 12.5 cents per hour above his regular rate, but in no event higher than the established minimum job rate.

The provisions of sub-section (b) shall not be deemed to extend in any way the coverage of this agreement to jobs not now covered or the right of the Union to represent in collective bargaining any employees not now included within the existing bargaining units as provided in Section 3 above. [821]

Section 9

Hours

(a) The work day for calculating overtime shall

be twenty-four (24) consecutive hours and the work week seven (7) consecutive work days. The regularly scheduled work days and work week will be conspicuously posted. Such scheduled work days shall provide for eight (8) hours shifts within a maximum spread of nine (9) hours except on operations requiring a larger spread, in which case there will be a maximum spread of fourteen (14) consecutive hours. Questions as to which jobs shall be so excluded shall be left to the plantation manager and local union for settlement. Emergencies such as failure of shift relief to report will be excluded. The seventh day of such scheduled work week shall be defined as the employee's weekly scheduled day of rest.

(b) Work performed by any employee in excess of eight (8) hours in any one work day, except when changing shifts, shall constitute overtime, but only if the work is performed at the request, or on the order of the Management.

(c) Work performed by any employee in excess of forty-eight (48) straight time hours in any one week shall constitute overtime, provided, however, that during the off-season work performed by employees under and subject to the maximum hour provisions of the Fair Labor Standards Act [822] in excess of forty (40) straight time hours in any one week shall constitute overtime. No overtime shall be paid unless the work is performed at the request or on the order of the Management. "Off-

season" is defined as that period during which the factory is shut down for its annual overhaul. An off-season shall begin on the work day immediately following the work day in which the last sugar is bagged or placed in bulk storage and shall end on the day on which grinding is resumed. Not later than the day on which the off-season begins, the Company shall post on the bulletin board a notice announcing the date the off-season begins; and not later than the day on which the off-season ends, the Company shall post on the bulletin board the date on which the off-season ends.

(d) Work performed by an employee on his weekly scheduled day of rest shall constitute overtime, but only if the work is performed at the request or on the order of the Management.

(e) Except in cases of emergency such as fire, flood, disaster or failure of replacement to relieve an employee, no employee shall be required to work more than fourteen (14) continuous hours without a rest period of eight (8) hours. Continuity shall not be deemed to be broken by meal periods.

(f) An employee reporting for work at his regularly scheduled starting time shall be guaranteed a minimum of two (2) hours' [823] work or two (2) hours' pay at the then prevailing basic straight-time rate in lieu thereof, unless such employee had been previously told not to report.

The attached Exhibit "D" sets forth the Industry statement of policy regarding hours worked.

Section 10

Overtime

Overtime work performed by any employee shall be paid for at one and one-half (1½) times the employee's regular rate of pay.

Employees shall receive credit for weekly overtime purposes of eight (8) hours on each of the holidays specified in Section 11 regardless of whether work is performed on that date or not.

Section 11

Holidays

Employees shall receive one and one-half times their regular basic straight time rate for work performed on any of the following days, provided, however, that employer may designate the twenty-four hour period which shall be considered as the holiday for overtime purposes but no less than sixteen (16) hours of said twenty-four (24) hour period must coincide with the calendar holiday:

New Year's Day
Good Friday
Memorial Day
Independence Day [824]
Labor Day
General Election Day
V-J Day, or an agreed-upon alternative
Thanksgiving Day
Christmas Day

If any of the above-mentioned holidays fall on Sunday or the employee's regularly scheduled day of rest, the following work day shall be considered as the holiday for the purpose of this section.

Section 12

Vacations

Every employee covered by this agreement who on July 1 or employment anniversary date shall have worked 265 days in the preceding 12 months period shall be entitled to a vacation of one calendar week (6 days) with pay computed on the basis of his then prevailing straight time hourly rate if on day work, and his average straight time earnings for such period if on piece work. For each additional unit of six work days worked in excess of 265 work days in the qualifying period every employee covered thereby shall receive an additional day of vacation provided, however, that no more than two calendar weeks (12 days) of vacation shall be allowed in any one calendar year. Vacation days shall be consecutive work days.

In computing vacation credit accrual dates may be extended by seventy-nine (79) days to permit employees an equal opportunity to earn vacations for the period [825] 1946-1947 and where this applies no credit will be given for days worked between August 31 and November 19, 1946.

Employees shall receive credit for purposes of computing their vacations for:

1. Lost time due to illness up to a maximum of 12 work days when excused by the plantation,

2. Lost time due to industrial accidents up to a maximum of 30 work days,

3. Authorized vacation days taken during the year,

4. Regularly scheduled work days if no work is offered on such days,

5. Holidays listed in Section 11, and

6. During the "off-season" if the Company does not offer 6 days' work a week credit shall be given for the days when no work is offered.

(In no event shall credit be given for the employee's regularly scheduled day of rest unless worked.)

"Work day" as used in this section shall constitute the number of hours of work required by the Company in the particular task in which the employee is engaged.

The Company shall have the sole and exclusive right to determine the period during which any employee shall take his vacation [826] but the expressed preferences of employees will be given due consideration. The Company will notify the employee two weeks in advance of the date upon which his vacation starts.

Vacations shall not be cumulative.

Section 13

Emergency Call-Out

A minimum of two (2) hours' pay at the prevailing rate will be provided for an employee called to perform emergency work. If the emergency work is performed in less than two (2) hours, it shall be the employee's prerogative to go home after its completion and be paid the two hours' pay, or the Company will provide a total of four (4) hours' work if the employee decides to continue working.

Section 14

Continuous and Uninterrupted Service

It is expressly understood and agreed that during the term of this agreement, any past, existing or future custom or practice of the Company or of the Union to the contrary notwithstanding, there shall be no lockout by the Company, nor any strike, sit-down, refusal to work, stoppage of work, slow-down, retarding of production or picketing of the Company on the part of the Union or its representatives, or on the part of any employee covered by the terms of this agreement. [827]

The presentation of grievances during working hours as authorized pursuant to Section 19 of the contract shall not constitute violation of this section.

Section 15

Deduction of Union Dues From Wages

The Company agrees to deduct from the wages

of such of its employees as shall so request in writing all dues hereafter becoming due from such employees to the Union, not to exceed, however, the sum of Three Dollars ($3.00) per month and an initiation fee not to exceed Ten Dollars ($10.00), and to transmit the money so deducted to the Union as hereinafter provided. Any employee desiring to have his Union dues deducted may sign a proper form requesting such deduction from his pay and such request for deduction will, if voluntarily made, upon filing with the Company, be honored for the duration of original term of this agreement or the assignment, whichever terminates first. Such deduction shall be made not oftener than once a month.

In case any employee does not have the total amount of any deduction, or more, due him on any pay roll from which deductions are made in respect of other such employees, the deduction shall be made out of the next succeeding pay roll upon which such employee has the total amount, or more, due. It is agreed that authorized deductions for government taxes and for the purpose of paying indebtedness to the [828] Company, garnishments and deductions required by law to be made by the Company shall have priority over deductions for Union dues.

Dues deduction assignments on file prior to August 31, 1946, will be honored (in the amount specified thereon) for the period of the agreement provided the employees who made such assignments have not signified their intention to the contrary

pursuant to notice posted in the form agreed upon. It is understood that employees failing to report to work during the period prescribed in the notice by reason of bona fide illness or other reasons beyond their control shall have such additional period for revocation as is necessary and reasonable.

The total amount of any dues deduction and initiation fees shall be promptly transmitted by the Company to the Union by check drawn to the order of the I.L.W.U., Local 145, Unit 7. Upon the issue of such check and transmission of same to Nobuyoshi Nakatsu or his successor of said Union, all responsibility on the part of the Company shall cease with respect to any amount so deducted. The Company shall not be bound in any manner to see to the application of the proceeds of any such check, nor to investigate the authority of any designated officer of said Union to sign any request, to accept any such check, or to collect the same. The Union hereby undertakes to indemnify and hold blameless the Company from any claim that may be [829] made upon it for or on account of any such deduction from the wages of any employee.

Section 16

Right of Access to the Company's Premises

A duly certified representative of the Union shall be permitted on the Company's premises for the purposes of investigating grievances that have arisen and ascertaining whether or not this agreement is being observed. Such Union representative

shall see the Manager, Assistant Manager, Personnel Director or the Industrial Relations Director, any one of whom shall permit the Union representative to enter the Company's premises; provided, however, that the Company may send a representative to accompany the Union representative, but the Union's representative in investigating any grievance shall be entitled to interview privately any employee covered hereby. It is further provided that such permission to enter the Company's premises shall be exercised reasonably and shall not interfere with the conduct of the Company's operations.

Section 17

Leave of Absence for Union Business

Any employee elected to an office in the Union which requires full time in the discharge of its duties shall be given a leave of absence of not more than one year without pay and without loss of seniority provided, however, that no more than three such employees shall be on leave of [830] absence at one time and that no more than one employee shall be on leave of absence at one time from any one operation of the Company. Arrangements can be made by mutual consent for temporary leaves of absence without pay for union business under circumstances that will not interfere with the Company's operation.

It is understood that arrangements for temporary leaves will be made for attendance at the regular Territorial I.L.W.U., conventions, and the Interna-

tional Convention of the I.L.W.U., provided ample notice is given and satisfactory provision can be made for operations during the employees' absence. It is further understood that requests for such leaves will be limited to not more than three such conventions in a year and that the number of delegates will not exceed one for each 100 employees up to 500, one for each additional 250 up to 1,000, and one per 500 above.

Section 18

Discharge

(a) Employees shall be subject to discipline or discharge by the Company for insubordination, pilferage, drunkenness, incompetence, failure to perform the work as required, violation of the terms of this agreement or failure to observe safety rules and regulations, and the Company's house rules which shall be conspicuously posted. Any discharged employee shall, upon request, be furnished the reason for his [831] discharge in writing. Any employee who has not had six (6) months of service with the Company may be summarily discharged.

(b) The Company agrees to notify the local union representatives of proposed changes in house rules prior to the posting of such new rules and to discuss such changes with the union representatives prior to their application, it being understood, however, that in all cases the final decision shall be left to Management.

It is also understood that the Company will undertake a review of existing house rules with a view to eliminating those that are obsolete or inapplicable. Such reviews will be discussed with employee representatives with the understanding that, in all cases Management's decision shall be final.

In the event of conflict between the house rules and provisions of this agreement, the agreement will prevail.

Section 19

Grievance Procedure

When any employee covered by the terms of this agreement, or the Union believes that the Company has violated the express terms of this agreement and that by reason of such violation his or its rights arising out of such agreement have been adversely affected, he or it, as the case may be, shall be required to follow the procedure hereinafter set forth in presenting the grievance. [832]

Step 1. The grievance may be presented by the employee concerned to his immediate supervisor or it may be presented by a representative of the Union acting in the employee's behalf to the employee's immediate supervisor who will give his answer within forty-eight (48) hours following the presentation of the grievance. At this step in the procedure, the grievance may be presented either orally or in writing and in the discretion of the employee's immediate supervisor may be answered

either orally or in writing. The Company promptly upon execution of this agreement, will provide the Union with a list of the supervisors, by Company operations, who will represent Management at this step in the grievance procedure, and will thereafter promptly advise the Union regarding any changes in connection therewith.

Step 2. If the grievance is not disposed of in the first step, the complainant employee or a representative of the Union acting in his behalf may present the grievance to the employee's Division or Department Head who will give his answer either orally or in writing within seventy-two (72) hours. At this step in the procedure the grievance may be submitted either orally or in writing. The Company, promptly upon execution of this agreement, will provide the Union with a list of the individuals who will represent Management at this step in the grievance procedure, and will thereafter promptly advise the Union regarding any changes in connection therewith. [833]

Step 3. If the grievance is not disposed of in the second step, the complainant employee may either present the grievance directly or through the Executive Committee of the Union acting in his behalf to the Industrial Relations Committee of the Company. At this step in the procedure, the grievance must be submitted in writing and the Industrial Relations Committee will answer the grievance in writing within one week following presentation of the written grievance to the Committee. The Com-

pany promptly upon execution of this agreement will inform the Union of the composition of the Industrial Relations Committee and will keep it informed of any changes therein.

Step 4. If the grievance is not disposed of in step three, it may be taken up in writing either by the employee directly or through the Executive Committee of the Union acting in his behalf at a meeting with the manager or his representative. Meetings with the manager shall be scheduled when necessary to resolve grievances appealed to that step of the procedure. After notification is received, meetings shall be held within one week. The Manager's written answer to written grievances shall be given within one week following the meeting.

Step 5. Any dispute involving the meaning, interpretation or application of the terms of this agreement which is not disposed of in Step 4 may be submitted to the Arbitrator in accordance with Section 20.

The Union promptly upon execution of [834] this agreement will provide the Company with a written list of its representatives, who will be empowered to act in an employee's behalf in presenting or investigating grievances in accordance with the procedure set forth herein, and will thereafter promptly advise the Company of any changes that are made.

International Union representatives may be present in meetings of the third step and succeeding steps of the grievance procedure.

The Company will not be required to consider

any grievance involving a single incident which has not been presented to the Company within fourteen (14) days following the date of the alleged occurrence of the incident. The Company will not be required to consider any grievance involving an alleged continuing situation or alleged series of repeated identical incidents which have not been presented to the Company within fourteen (14) days following the date on which the situation or incident last occurred.

Failure of the Company to answer a written grievance within the time limits prescribed in each step of the grievance procedure shall permit reference of the case to the succeeding step of the procedure following the expiration of the time limits.

The Company shall not be required to consider any grievance case in which the employee or the Union acting in his behalf does not refer the case to the succeeding step of the grievance procedure within fifteen (15) days following the delivery [835] of written decisions by the Company in Step 3 or in succeeding steps of the grievance procedure.

Addition to Grievance Clause. In the absence of authorization to the contrary grievances are to be presented and considered outside of working hours. It is understood, however, that where reasonable and where possible without undue loss of productive time and interference with operations authority will be extended to present grievances within working hours.

Section 20

Procedure Before Arbitrator

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....,
....,
....,

are hereby appointed as a panel of arbitrators. In the event a dispute arises concerning the application or interpretation of the terms of this agreement which cannot be settled pursuant to the provisions of Section 19, the dispute shall be submitted to one of the arbitrators who shall be chosen as follows: Each party may strike two names from the panel and the remaining arbitrator shall serve in the case. All decisions of the Arbitrator shall be limited expressly to the terms and provisions of this Agreement, and in no event may the terms and provisions of this agreement be altered, amended or modified by the Arbitrator. The Arbitrator shall receive for his services such remuneration as, from [836] time to time, shall be acceptable to him and agreed upon by the parties hereto. All decisions of the Arbitrator shall be in writing and a copy thereof shall be submitted to each of the parties hereto. All fees and expenses of the Arbitrator shall be borne equally by the Union and the Company. Each party shall bear the expenses of the presentation of its own case.

The complainant in every hearing before the Arbitrator shall have the burden of proving his case by a preponderance of the evidence, and, in

general, judicial rules of procedure shall be followed at such hearings but the Arbitrator need not follow the technical rules of evidence prevailing in a court of law or equity.

Section 21

Sick Leave

Effective on the date of the conversion of perquisites in accordance with Section 7, the following sick benefit allowance plan will be put into effect. Every employee covered by this agreement who has been in the continuous employment of the Company shall receive benefit payments in accordance with the following schedule:

For disability lasting more than three work days resulting from sickness or from accidents not incurred in the actual performance of the duties of an employee's occupation, hourly rated employees shall be entitled to benefits payable beginning with the fourth work day of disability, in accordance with the following plan, provided, however, that no payment will be made for [837] days which are not the employee's regular work days:

Years of service	Total days of benefit per year at two-thirds pay
1 yea. but less than 2 years.....	6
2 years but less than 3 years.....	12
3 years but less than 4 years.....	18
4 years but less than 5 years.....	24
5 years or more.....	30

Unused benefit allowances will not accumulate from year to year.

All employees will be credited with past service on the date this plan is initiated.

In the event the total benefits for the year are not used up in one period of disability, the balance may be applied in case of a subsequent disability within the year, subject to the same waiting period and other conditions. No benefit shall be paid for disability directly or indirectly due to (1) use of stimulants, drugs, or narcotics, (2) Unlawful acts, or (3) wilful intent of the employee to injure himself or another.

Employees shall promptly notify their supervisors and the doctor or nurse employed by or designated by the Company of any sickness or disability for which allowances may be claimed.

In each case of disabling illness or accident, the Company reserves the right to have a doctor or nurse make such examinations from time to time as may be necessary to ascertain employee's condition, and the opinion of such doctor or nurse shall prevail as to (1) whether the employee is disabled on account of sickness or accident, [838] (2) when he is able to return to work, and (3) duration or degree of disability.

One day's wages shall be calculated on the basis of eight (8) straight time hours multiplied by the employee's classification rate.

Section 22

Document Contains Entire Agreement

This document contains the entire agreement of the parties and neither party has made any representations to the other which are not contained herein.

In Witness Whereof, the parties hereto, through their duly authorized representatives, have executed this agreement on the 25th day of February, 1947.

WAIALUA AGRICULTURAL
COMPANY, LIMITED,
(Company)

/s/ JOHN H. MIDKIFF,
Its Manager;
JOHN W. ANDERSON,
WILLIAM W. PATY, JR.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 145, UNIT 7,

/s/ JUSTO DE LA CRUZ,
JOSEPH T. MORITA,
GEORGE FRANKS, JR.,
DALMACIO TATERA,
TONY RANIA,
NOBUYOSHI NAKATSU,
NORBERTO NAVARRO;
JACK W. HALL,
Regional Director. [839]

Exhibits

Exhibit A. Coverage. (Tests to be applied plantation by plantation.)

The parties agree to re-examine the exclusion from the units of jobs on the basis that they were supervisory in nature, with a view toward removing discrepancies and excluding on such basis only bona fide supervisors or lunas as defined by the following standards:

To classify an individual as a Supervisor he must fulfill the following requirements.

1. Receives a regular monthly salary, with all the privileges and benefits of employees in a salaried status, and whose compensation shall be the equivalent of at least 12.5 cents per hour in excess of the highest classification rate of jobs regularly supervised or in case of supervision of gangs working on group contract incentive plans at least 12.5 cents per hour above the average earnings of the gang; and

2. Has the authority to hire or fire other employees or whose recommendations as to hiring or firing and as to the advancement, promotion or demotion, transfer and reclassification of other employees will be given particular weight; and 3 below. [840]

3. Who is charged with the responsibility for the operation of a department, or a definite subdivision within a department, and for the opera-

tion, maintenance and safeguarding of company machinery, equipment and materials under his supervision, and who in the discharge of his responsibility customarily and regularly exercises discretionary powers, but who does not spend more than 20 per cent of his time performing the same work as is performed by those employees under his supervision, and

Who supervises and directs as part of his duty, the work of all employees in the department, or subdivision thereof, for which operation he is held responsible and spends not more than 20 per cent of his time performing the same work as is performed by those employees under his supervision.

It is recognized that the application of the above standards may mean the exclusion of some jobs now covered as well as the inclusion of jobs now excluded. Employees now receiving monthly salaries will not be converted to hourly rates by reason of their inclusion in the unit.

(These tests shall not be construed to extend the coverage of the contract to any jobs or employees now excluded except those now excluded solely on the basis that they are supervisory and do not meet the [841] above standards. The agreement reached in this document shall not be used to prejudice the position of either party on the interpretation or application of the Hawaii Employment Relations Act or the National Labor Relations Act.)

Exhibit B. (Exhibit B will not be used in the general contract, but there will be a separate exhibit in the contract of Waialua, Ewa, H. C. & S. and Honolulu plantations based upon Exhibit B of the memorandum.)

Exhibit C

Industry Wage Schedules

Grade	Classification schedule cents per hour	Revised schedule including wage increase
1	43½	70½
2	47	74
3	51½	78½
4	56	83
5	61½	89
6	68	96
7	75½	104½
8	84	114
9	94	125
10	106	138

Exhibit D. Industry Statement of Policy Regarding Hours Worked.

Time on each work day shall commence at the time established for the employee's scheduled shift and shall continue until the time fixed for the ending of such shift at the [842] place of work plus any overtime requested by Management; but it shall not include:

(a) Non-working meal periods.

(b) Time between parts of a split shift.

(c) Time elapsing between the end of an

employee's regular shift and the starting of overtime work on a succeeding shift when the employee is free to do as he chooses.

(d) Time not worked in excess of "called out" time.

The following cases illustrate time also treated as hours worked:

1. Time during which an employee operates a vehicle pursuant to Company orders for the transportation of other employees or of materials and ending with its return to the designated place of storage.

2. Time spent by all employees between the moment (a) when materials or tools, not normally retained in the possession of the employees, are picked up, or (b) when work assignments of instructions are issued, and the scheduled starting time at the place of work; provided that all such time occurs within the employer's scheduled workday.

3. Likewise time at the close of work on the workday between the scheduled finishing time and the time when all instructions are completed and materials and tools (covered in 2 above) are returned to their designated place of storage. [843]

4. Time spent in transportation from one field to another or one job to another during the shift. In this case time for all workers thus transported will be paid for at the classified hourly rate of the

job classification on which the employee is working or transferred to whichever is the greater.

Employees shall not be required to assemble for instructions on their own time.

In the matter of providing transportation for workers in the fields back to the assembling points or their homes it shall be the policy of the companies to offer transportation in such a manner that it will not require any worker to wait more than 15 minutes after the end of the regularly scheduled workday before boarding the vehicle. Management will make every effort, barring circumstances beyond its control, to comply with this policy. [844]

EXHIBIT "E"

INDUSTRY MONTHLY RENTAL RATES OF DWELLINGS ACCORDING TO FLOOR AREA, CLASS AND CONDITION OF BUILDING

	Class 1			Class 2			Class 3		
	A	B	C	A	B	C	A	B	C
500 Sq. Ft. or less	$10.00	$12.50	$15.00	$12.50	$15.00	$18.00	$15.00	$18.00	$21.50
600 " " " "	11.00	14.00	17.00	14.00	17.00	20.50	17.00	20.50	24.50
700 " " " "	12.00	15.50	19.00	15.50	19.00	23.00	19.00	23.00	27.50
800 " " " "	13.00	17.00	21.00	17.00	21.00	25.50	21.00	25.50	30.50
900 " " " "	14.50	18.50	23.00	18.50	23.00	28.00	23.00	28.00	33.50
1000 " " " "	15.00	20.00	25.00	20.00	25.00	30.50	25.00	30.50	36.50
1100 " " " "	16.00	21.50	27.00	21.50	27.00	33.00	27.00	33.00	39.50
1200 " " " "	16.75	22.50	28.50	22.50	28.50	35.00	28.50	35.00	41.75
1300 " " " "	17.50	23.00	30.00	23.50	30.00	37.00	30.00	37.00	44.00

A. Rental for houses with floor area falling between the above points will be adjusted to the nearest 25c per month.

B. This schedule will not apply to future construction. (Maximum rental on Olokele houses now being completed, $43.50 per month.)

C. Rental adjustments for improvements or repairs affecting the class, condition or floor area of the house will be made effective on the first of the month following completion of the work.

D. Floor area is that area expressed in square feet under the roof line of each dwelling including service facilities directly attached to the house or, in an elevated house, the enclosed or concrete area on the ground floor.

E. Water, when metered, will be charged for at current county rates in effect in the locality. Otherwise a flat rate of $1.00 per month will be charged to families occupying dwellings up to 1000 square feet in floor area and $1.50 per month for those from 1001 to 1500 square feet.

F. Electricity will be purchased by each tenant for his own account from the local public utility where available; otherwise from the plantation at public utility rates.

G. Fuel will be purchased by each tenant from any source available to him.

EXHIBIT "E"

INDUSTRY MONTHLY RENTAL RATES OF BEDROOMS IN SINGLE MEN'S QUARTERS ACCORDING TO HOUSE FLOOR AREA PER BEDROOM, CLASS AND CONDITION OF BUILDING AND PER CAPITA MINIMUM RENTALS

House floor area per bedroom	Class 1			Class 2			Class 3		
	A	B	C	A	B	C	A	B	C
100 Sq. Ft. or less	$ 5.00	$ 6.75	$ 8.50	$ 6.75	$ 8.50	$10.50	$ 8.50	$10.50	$12.75
125 " " " "	5.25	7.25	9.25	7.25	9.25	11.50	9.25	11.50	14.00
175 " " " "	5.50	7.75	10.00	7.75	10.00	12.50	10.00	12.50	15.25
225 " " " "	5.75	8.25	10.75	8.25	10.75	13.50	10.75	13.50	16.50
275 " " " "	6.00	8.75	11.50	8.75	11.50	14.50	11.50	14.50	17.75
325 " " " "	6.25	9.25	12.25	9.25	12.25	15.50	12.25	15.50	19.00
PER CAPITA MINIMUM RENTALS									
100 Sq. Ft. or less	3.00	4.00	5.00	4.00	5.00	6.25	5.00	6.25	7.25
125 " " " "	3.25	4.25	5.50	4.25	5.50	7.00	5.50	7.00	8.00
175 " " " "	3.25	4.50	6.00	4.50	6.00	7.75	6.00	7.75	8.75
225 " " " "	3.50	4.75	6.50	4.75	6.50	8.50	6.50	8.50	9.50
275 " " " "	3.50	5.00	7.00	5.00	7.00	9.25	7.00	9.25	10.25
325 " " " "	3.75	5.25	7.50	5.25	7.50	10.00	7.50	10.00	11.00

A. Rental for bedrooms with house floor area per bedroom falling between the above points will be adjusted to the nearest 25c per month.

B. This schedule will not apply to future construction.

C. Rental adjustments for improvements or repairs affecting the class, condition or square foot area of the building will be made effective on the first of the month following completion of the work.

D. House floor area per bedroom is the total floor area of the house divided by the number of bedrooms in the house.

E. Water, when metered, will be charged for at current county rates in effect in the locality. Otherwise a flat rate of $0.50 per month will be charged each single occupant of single men's quarters.

F. Electricity will be purchased by each tenant for his own account from the local public utility where available; otherwise from the plantation at public utility rates.

G. Fuel will be purchased by each tenant from any source available to him.

Exhibit "E"

Classification of Dwellings

The following descriptions set forth the types of construction and of the facilities provided:

Class 1. A dwelling constructed of rough merchantable lumber, stud framing, single wall, floors 1"x12" or 1"x6"; stock sized or T & G doors; sliding windows; drop cord electrical outlets; toilet, bathing and laundry facilities detached; kitchen with sink and tap may be attached or detached.

Class 2. A dwelling constructed of surfaced lumber; ceiling of Canec, surfaced lumber, or other material; single wall; stock doors, sliding or hung windows; stain or paint outside and inside; drop cord electrical outlets; kitchen, with sink and tap, attached; toilet and bathing facilities and laundry, with laundry trays, detached, sewer or cesspool connections.

Class 3. A dwelling constructed of surfaced lumber; Canec or surfaced lumber ceiling; T & G floors; stock doors; sliding, double hung or casement windows; stain or paint outside and inside; clothes closets; some kitchen cabinet work; floor plugs and outlets for electrical equipment; shower or bathtub, standard flush toilet, [847] lavatory and kitchen sink in the dwelling; individual laundry and laundry trays; sewer or cesspool connections.

All the houses in each of the categories may not correspond in every detail.

The three classes of physical condition are as follows:

Class A. A dwelling requiring major repairs or thorough renovating or possibly complete replacement.

Class B. A dwelling requiring general, but not major, repairs and painting.

Class C. A dwelling which has been well maintained and repaired, or which has been built, remodeled, or thoroughly renovated within the past five years and well maintained since.

Exhibit "E"

Temporary Voluntary Medical Plan

The plan provides that any persons who enjoyed medical perquisites on the plantation heretofore is eligible to join and further as a condition of membership in the temporary medical plan, membership fees become effective as of November 19, 1946.

Brief description of medical plan forms:

I. Application for Membership (Triplicate)

This form, when properly filled out, will provide information to determine the amount of monthly dues. [848]

II. Schedule of Rates and Certificate of Membership

This form provides the employee with information relative to the rates being charged and also a certificate that the employee has

become a member of the plan at the applicable rate.

III. Rejection of Plan by Employee
This document should be signed by every employee who refuses to join the plan within an allotted time.

Attention is called to the fact that for simplification, all forms are made up for Waialua Agricultural Company, Ltd., and, of course, are sample copies only. It is anticipated that each plantation will reproduce the forms for their own use.

It is understood that a regular Medical plan is to be developed to become effective six months from date of the contract. It will provide similar coverage to the H.M.S.A. Lanai plan and at rates substantially equivalent to those then prevailing under that plan.

The formal Medical plan may be an insured plan, the H.M.S.A. plan, or the temporary plan may be continued, at the option of the plantation. If the temporary plan is continued hospital facilities may be consolidated or transferred. [849]
Sample Copy

Exhibit "E"

Temporary Voluntary Medical Plan for Waialua Agricultural Co., Ltd., Employees and Their Families

This Plan is offered by the Company to provide for continuation at the lowest possible cost to the

employee of the medical care heretofore furnished to employees and their families.

Schedules of Rates
(Per Month)

Earnings— Wages or Salary Group	Schedule 1 Employees Within Units 1, 2 & 3
Single:	$1.65
Married:	1.40
Spouse (Additional)	1.10
First Child (1-18)	1.10
Additional Children (1-18)	1.10
*Maximum Rate	6.00

*Families of six or more pay maximum rate. Size of family unlimited.

Certificate of Membership

Waialua Agricultural Co., Ltd.
Medical Plan

This certifies that as of ....., 19....., ... has become a member of Waialua Agricultural Co., Ltd., Medical Plan.

Payment made as follows:

Dues—Month of..... $
..... $
..... $
..... $.....

Waialua Agricultural Co., Ltd.

By..... [850]

Sample Copy (To be prepared in triplicate)

Exhibit "E"

Application for Membership in Waialua Agricultural Co., Ltd., Medical Plan

I hereby make application for membership in the Waialua Agricultural Company., Ltd., Medical Plan. I agree to abide by the regulations set up by the Company for this Medical Plan and I hereby authorize the Company to examine any Hospital or Physician's records concerning me.

Full Name (Print):.....
First Middle Last Name

Address: (Camp and House No.).....

Bango Number.....

Age:..... Height:.....

Job Title: .....

Weight:..... Married:..... Single:.....

Male..... Female:.....

List all dependents below:

(Wife, husband, aged or infirm parent living with employee and classified by the plantation as dependent on November 19, 1946, and all children under 18 years old.)

	Name	Date of Birth	Relationship
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....
5.	.....	.....	.....
6.	.....	.....	.....
7.	.....	.....	.....
8.	.....	.....	.....

I understand that upon execution of this application and payment of dues as indicated below, I will be entitled to service under the plan.

I also understand that I will continue to be a member of the plan only as long as I am in the employ of the company and monthly dues are paid on or before the 15th of each month.

Date:..... Signature:.....

Signature of Witness if Application
is signed by mark:.....

.....

Dues Schedule No.....

Amount of Monthly dues: . . . . . $.....

Amount paid with this application . . $.....

Sample Copy (Alternate)

Exhibit "E"

(To be prepared in triplicate)

Application for Membership in
Waialua Agricultural Company, Ltd.
Medical Plan

I formally accept the temporary Medical Plan of the Waialua Agricultural Co., Ltd., pursuant to the Agreement of November 19, 1946, between my authorized collective bargaining agents and representatives of the Waialua Agricultural Co., Ltd. I am aware that after May 19, 1947, and in accordance with the understanding between the representatives of the company and my collective bargaining agents, another plan with standard provisions for medical and hospital service may be substituted for this plan. I also understand that at the time of substitution this plan will be discontinued, and all obligation of the Waialua Agricultural Co., Ltd., will cease.

Full Name (Print): .....
First Middle Last Name

Address: (Camp and House No.) .....

Bango Number .....

Job Title: ..... Age: ..... Height: .....

Weight: ..... Married: ..... Single: .....

Male: ..... Female: .....

List all dependents below:

(Wife, husband, aged or infirm parent living with employee and classified by the plantation as dependent on November 19, 1946, and all children under 18 years old.)

	Name	Date of Birth	Relationship
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....
5.	.....	.....	.....
6.	.....	.....	.....
7.	.....	.....	.....
8.	.....	.....	.....

I understand that upon execution of this application and payment of dues as indicated below, I will be entitled to service under the plan.

I also understand that I will continue to be a member of the plan only as long as I am in the employ of the company and monthly dues are paid on or before the 15th of each month.

Date:..... Signature:.....

Signature of Witnesses if Application is signed by mark:.....

.....

Registration Fee $1.00

Dues Schedule No.....

Amount of monthly dues: . . . . . $.....

Amount paid with this application . . $.....

Sample Copy

Exhibit "E"

Employee's Rejection of Temporary Medical Plan

I have received expanatory data outlining the Temporary Medical Plan being offered to employees of Waialua Agricultural Company, Limited, and for which I am eligible. I have had an opportunity to apply for participation.

After due consideration I elect not to participate in this Plan.

I understand that this Plan is the only Company plan under which my employer will aid in providing medical attention for me and my family.

.....,

Signature of Employee.

Date.....

.....,

Signature of Witness. [854]

Exhibit "F"

Statement of Consideration to Guide Appraisal and Determination of Fair Rentals on Existing Plantation Houses

1. The employers do not intend to make housing a profit making venture, as such.

2. Computation of fair rentals will contemplate in addition to the foregoing, consideration of the following factors as well as any others considered pertinent by the appraisers.

a. Fair value of land and dwellings will be determined by the American Appraisal Company if approved by the Union or other appraiser of comparable standing mutually agreed upon, taking into consideration such factors as in the opinion of the appraisers should be considered in recognition of the principle that the housing operation is not being undertaken as a profit making venture, as such, it being stipulated, however, that book value will not be used in establishing said value.

b. Interest and depreciation based on (a).

c. Taxes.

d. Insurance.

e. Maintenance and Repairs.

f. Village Services.

g. Administrative Expense. [855]

3. Any adjustments in rent will be made on an industry wide basis.

4. Union will be afforded an opportunity to present its position to the appraiser (prior to final determination) on the determination of fair rentals on existing plantation housing including the presentation of their views on the weighting or consideration that in its opinion should be given any or all of the above factors. [856]

EXHIBIT "G"

SCHEDULE SHOWING "OFF SEASON" FOR ALL PLANTATIONS

HAWAII	1940		1941		1942		1943		1944		1945	
Hilo Sugar Co.	10/ 8/40	1/ 5/41	12/ 7/41	1/14/42	12/21/42	1/21/43	11/28/43	1/ 4/44	12/10/44	1/27/45	12/21/45	2/ 4/46
Onomea Sugar Co.	10/22/40	12/ 9/40	12/17/41	1/11/42	no off season		12/22/43	1/11/44	12/ 9/44	1/24/45	12/19/45	1/27/46
Pepeekeo Sugar Co.	10/20/40	1/ 4/41	12/14/41	1/10/42	10/19/42	1/ 5/43	12/19/43	1/ 8/44	12/ 3/44	1/13/45	11/18/45	1/ 8/46
Hakalau Plantation Co.	11/ 9/40	2/ 4/41	12/12/41	1/19/42	11/27/42	1/ 4/43	11/27/43	1/ 3/44	12/21/44	2/6/45		
Laupahoehoe Sugar Co.	12/31/39	2/17/40	8/31/41	10/ 4/41	12/13/42	1/23/43	12/19/43	1/15/44	12/ 3/44	1/20/45	12/ 2/45	1/ 5/46
	11/10/40	12/14/40	12/ 7/41	1/17/42								
	12/29/40	1/11/41										
Kaiwiki Sugar Co.	11/12/39	1/ 6/40	12/ 7/41	1/17/42	8/16/42	8/29/42	8/22/43	9/11/43	4/23/44	5/13/44	7/22/45	8/ 4/45
	3/31/40	4/20/40			12/13/42	1/30/43	11/21/43	1/22/44	12/ 3/44	3/ 3/45	12/ 2/45	1/ 5/46
	7/29/40	9/ 7/40										
	11/ 3/40	2/22/41										
Hamakua Mill Co.	11/ 5/39	1/ 6/40	12/14/41	1/17/42	4/26/42	5/ 9/42	12/12/43	1/29/44	11/12/44	1/13/45	11/11/45	1/ 5/46
	6/30/40	7/13/40			12/20/42	2/ 6/4†						
	8/11/40	9/28/40										
	12/15/40	3/15/41										
Paauhau Sugar Plantation Co.	11/ 8/40	1/ 6/41	12/12/41	1/ 8/42	12/19/42	2/ 2/43	11/13/43	1/ 4/44	11/26/44	1/15/45	12/ 2/45	2/ 4/46
Honokaa Sugar Co.	12/24/40	1/ 7/41	no stops		12/24/42	1/ 7/43	12/24/43	1/12/44	12/23/44	1/15/45	12/28/45	3/ 4/46
Kohala Sugar Co.	12/31/40	1/20/41	12/15/41	1/ 5/42			1/ 1/43	1/19/43			1/ 1/45	1/29/45
							12/28/43	2/ 3/44			10/27/45	3/ 3/46
Hutchinson Sugar Pltn. Co.	12/31/40	2/10/41	12/13/41	1/19/42	12/30/42	2/14/43	12/16/43	1/20/44	12/ 8/44	1/ 9/45	12/12/45	1/22/46
Hawaiian Agricultural Co.	11/24/40	1/ 4/41	12/15/41	1/20/42	12/19/42	1/19/43	12/17/43	1/21/44	12/ 3/44	1/ 5/45	11/23/45	1/2†/46
Olaa Sugar Co.	10/ 7/40	12/31/40	11/30/41	12/31/41	1/ 1/42	1/ 6/42	1/ 1/43	1/ 6/43	1/ 1/44	1/ 5/44	1/ 1/45	1/ 9/4†
					12/14/42	12/31/42	12/ 1/43	12/31/43	12/24/44	12/31/44	12/24/45	12/31/45
Waiakea Mill Co.	9/17/39	1/ 6/40	4/20/41	5/24/41	6/ 7/42	7/11/42	4/11/43	5/ 8/43	12/24/44	1/27/45	12/23/45	1/ 5/46
	6/16/40	7/13/40	6/29/41	8/ 2/41	10/25/42	1/ 9/43	10/31/43	1/15/44				
	9/ 1/40	11/23/40	10/19/41	1/10/42								
	12/ 1/40	1/11/41										
MAUI												
Pioneer Mill Co.	1/ 1/40	2/ 8/40	1/ 1/41	1/ 5/41	1/ 1/42	1/12/42	1/ 1/43	1/14/43	1/ 1/44	1/ 9/44	1/ 1/45	1/15/45
	11/20/40	12/31/40	10/26/41	12/31/41	11/22/42	12/31/42	11/21/43	12/31/43	10/16/44	12/31/44	10/31/45	12/31/45
Wailuku Sugar Co.	5/19/40	6/24/40	12/21/41	1/31/42	11/29/42	1/30/43	8/ 3/43	8/18/43	2/24/44	3/13/44	8/13/45	9/ 5/45
	12/22/40	2/ 1/41					11/14/43	1/ 8/44	8/ 9/44	9/ 6/44	12/ 9/45	2/ 9/46
									11/ 5/44	1/20/45		
Hawaiian Commercial & Sugar Co.	9/11/40	1/ 6/41	9/20/41	1/ 8/42	11/26/42	1/26/43	12/ 2/43	1/26/44	11/13/44	1/29/45	11/11/45	1/21/46
Maui Agricultural Co.	6/14/40	10/ 1/40	6/14/41	9/15/41	12/20/42	2/ 1/43	12/ 4/43	1/17/44	12/22/44	2/19/45	12/28/45	3/25/46
	12/20/40	1/ 6/41										
OAHU												
Waimanalo Sugar Co.	12/26/40	2/14/41	12/15/41	3/ 1/42	12/30/42	2/ 9/43	12/25/43	2/25/44	12/23/44	3/11/45	11/30/45	2/17/46
Kahuku Plantation Co.	10/22/40	1/20/41	11/ 4/41	2/23/42	11/13/42	1/25/43	9/30/43	1/11/44	10/17/44	1/22/45	10/20/45	2/15/46
Waialua Agricultural Co.	11/ 9/40	1/ 7/41	9/ 6/41	1/23/42	10/ 9/42	1/21/43	10/ 7/43	1/16/44	9/21/44	1/ 8/45	10/ 6/45	1/14/46
Waianae Co.	1/ 1/40	1/ 9/40	1/ 1/41	1/22/41	1/ 1/42	1/31/42	1/ 1/43	2/19/43	1/ 1/44	2/ 9/44	1/ 1/45	1/10/45
	9/23/40	12/31/40	7/24/41	9/ 1/41	12/11/42	12/31/42	11/17/4†	12/31/43	10/ 5/44	12/31/44	4/ 6/45	5/30/45
			10/ 7/41	12/31/41							10/27/45	12/31/45
Ewa Plantation Co.	11/19/40	1/20/41	11/ 3/41	2/16/42	11/20/42	1/11/43	11/16/4†	1/24/44	11/ 4/44	1/15/45	12/13/45	2/14/46
Oahu Sugar Co.	1/ 1/40	1/18/40	1/ 1/41	1/24/41	1/ 1/42	1/22/42	1/ 1/43	2/ 3/43	1/ 1/44	2/ 3/44	1/ 1/45	1/ 8/45
	7/28/40	10/11/40	8/ 4/41	9/11/41	12/28/42	12/31/42	12/ 1/43	12/31/43	8/28/44	11/ 4/44	4/ 7/45	5/ 7/45
	12/18/40	12/31/40	12/22/41	12/31/41					12/29/44	12/31/44	8/27/45	11/26/45
											12/30/45	12/31/45
*Honolulu Plantation Co.	11/28/39	2/ 5/40	4/25/41	5/26/41	12/27/42	2/15/43	12/ 4/4†	2/ 6/44	9/23/44	6/ 3/45		
	9/28/40	11/ 6/40										
	12/25/40	2/10/41										

EXHIBIT H (p.178)

WAILUKU AGRICULTURAL COMPANY, LIMITED

OPERATING EXPENSES FOR THE TWELVE MONTHS ENDED DECEMBER 31, 1945

CLASSIFICATION OF CHARGES - YEAR 1945

CLASSIFICATION OF

SUGAR OPERATIONS	1945 Total Charges	Direct Labor Hours	Direct Labor Amount	Materials	Sundry Expenditures	Total Service Charges	Railroad Department	Tractor Department Tractors	Tractor Department Poison Spray Equipment	Mechanical Harvesting Department	Auto and Truck Dept. Garage	Auto and Trucks	Stable Dept.	Light and Power Dept. Electric Current	Light and Power Dept. Electric Shop	Blac S
CULTIVATING:																
Plowing	$ 14,113.89	12,071-1/2	$ 5,465.09	$	$	$ 5,646.80	$	$ 4,646.76	$	$	$	$ .92	$ 111.20	$	$	$
Planting	38,781.80	37,204	17,638.02	2,836.41	271.83	8,035.54		1,871.04		90.00	12.63	5.91	21.16	498.40		
Ratooning	58,374.80	84,891-1/2	34,161.02	6,765.05	570.33	16,276.40		16,012.84						1,460.40		
Replanting	15,120.38	28,624	12,064.20			3,056.18							1,460.40			
Weeding	84,521.99	134,947-1/2	75,384.57	7,976.40		1,062.62		426.56	601.15			5,44	4,840.43	484.20		
Irrigating	87,019.87	160,553-1/2	81,687.24			5,332.83		2.16						952.00		
Fertilizing (Table 5)	161,034.10	27,120-1/2	11,262.58	148,810.52		952.00										
Other Cultivating	9,613.54	56,580-1/2	22,910.54	1,550.17	.05	151.48		7.92	74.80			4.51				
Unexpired Long Term Agreements	10,377.31		10,377.31													
Fallowing																
Total Cultivating Charges	468,359.68	581,993	271,451.17	167,947.55	843.11	44,117.85		26,967.68	675.95	90.00	28.49	4,862.51	3,502.80			
IRRIGATION WATER SUPPLY:																
Pumps (Schedule 1-1)	166,689.82	45,284-1/2	23,202.23	96,394.70	13,048.89*	60,141.78	2,077.45				97.96	88.56		55,125.65	1,384.32	2
Water Purchases	40,098.45				40,098.45											
Distribution System	53,780.13	79,544-1/2	33,930.83	8,748.39	497.90	10,543.01		846.92	546.88	1,834.00	315.11	3,472.78				
Total Irrigation Water Supply	260,568.40	124,809	57,133.06	105,143.09	27,543.46	70,684.79	2,077.45	846.92	546.88	1,834.00	413.07	3,561.34		55,125.65	1,384.32	2
HARVESTING:																
Mechanical Harvesting	141,081.03	117,734	68,770.62	51.56		76,858.85		7,219.68		69,026.00		3.84				
Brooming	9,933.78	16,641-1/2	7,855.60	1.54		2,676.64		2,593.44					83.20			
Total Harvesting Charges	151,014.81	134,375-1/2	76,626.22	53.10		78,735.49		9,813.12		69,026.00		3.84	83.20			
TRANSPORTING:																
Field Haul	77,986.37	65,835	39,348.55	1,731.49		36,906.33	9,810.83	25,466.00		44.00	114.24	170.13	760.00			3
Main Line Haul	114,697.50	80,797-1/2	7,660.91	141.95	16.37	106,878.27	106,699.50			6.00	.77	9.80	51.20		104.57	
Total Transporting Charges	192,683.87	86,632-1/2	47,009.46	1,873.44	16.37	143,784.60	116,509.33	25,466.00		50.00	115.01	179.93	811.20		104.57	3
GENERAL FIELD EXPENSE:																
Agricultural Control and Research	18,778.72	29,164-1/4	14,850.49	646.97	1,604.52	1,676.74					53.53	1,540.27		32.77	43.17	
Cleaning - Weeding	12,365.95	9,458	3,769.04	5,340.67	3.50	3,228.74		176.40	1,059.22			1,347.50		605.81	34.89	
Field Supervision Expense	56,430.79	39,701-1/2	25,932.26	2.58	54.84	10,442.11						7,765.31	676.80			
Field Tools Expense	8,861.27	1,956	621.44	2,155.17	22.76*	107.42					33.30	1.28		.04		
Pest Extermination	2,833.36	5,764	2,414.60	418.43		.33					.33					
Repairs - Fences	88.86	188	69.42	14.24		4.50						4.50				
Repairs - Roads and Bridges	14,068.91	6,668-1/2	2,977.01	4,021.79	561.25	6,504.86		1,096.44	466.25	220.00	62.57	1,970.98			.84	
Repairs - Storm Ditches	7,999.20	4,846-1/2	1,736.69	2,797.57		3,364.94		10.20	333.95	2,558.00	442.37	298.43			89.34	
Surveying	5,726.07					5,726.07										
Transportation of Field Supplies	7,586.36	36	16.47			7,569.89	38.66					7,531.23				
Transportation of Labor	13,105.38	387-1/2	179.06			12,926.32						12,926.32				
Total General Field Charges	141,830.87	97,066-1/4	72,555.48	14,922.02	2,201.35	52,152.02	38.66	1,283.04	1,859.02	2,778.00	592.19	35,386.23	676.80	646.62	168.24	
MANUFACTURING:																
Mill Expense and Repairs (Grinding Season)	219,993.99	253,399-1/4	128,816.87	49,069.61	6,684.24	39,423.27	34.25	84.44		38.00	132.63	6,427.76		22,289.84	3,165.67	1,
Mill Expense and Repairs (Off Season)	127,244.53	54,404	32,854.20	82,598.06	1,944.56	9,847.71	173.55	1.92		550.00	480.62	197.84		807.05	1,246.49	1,
Sugar Bags	148,046.09			148,046.09												
Total Manufacturing Charges	495,284.61	307,803-1/4	157,671.07	280,313.76	8,628.80	49,270.98	207.80	86.36		592.00	613.25	6,625.60		23,096.89	4,412.16	2,
TOTAL DIRECT OPERATING CHARGES	1,728,228.24	1,332,679-1/2	677,846.46	570,252.96	39,233.09	438,995.73	118,829.83	64,443.14	3,083.85	74,370.00	1,762.21	50,819.45	5,074.00	78,868.14	6,069.69	3,

* Figures in colum 8 above marked * represent reimbursed expenditures.

EXHIBIT H (p.178)

YEAR 1945

CLASSIFICATION OF SERVICE CHARGES

Sundry Expenditures	Total Service Charges	Railroad Department	Tractor Department Tractors	Tractor Department Poison Spray Equipment	Mechanical Harvesting Department	Auto and Truck Dept. Garage	Auto and Trucks	Stable Dept.	Light and Power Dept. Electric Current	Light and Power Dept. Electric Shop	Blacksmith Shop	Carpenter Shop	Paint Shop	Machine Shop	Welding Shop	Civil Engineer	Const. Machinery & Equip.	Sewer and Water Dept.	Seed Cane Dept.	Accounting Service Dept.	Service Departments Supervision
$	$ 5,646.80	$	$ 4,646.76	$	$	$	$ .92	$ 111.20	$	$	$	$	$	$	$	$	$ 1.12	$	$	$	$
271.83	8,035.54		1,871.04		90.00	12.63	5.91	21.16	498.40												
570.33	16,276.40		16,012.84						1,460.40								9.07	335.54			
	3,056.18																8.16		1,587.62		
	1,062.62		426.56	601.15													34.51				
	5,332.83		2.16				5.44	4,840.43	484.20												
	952.00								952.00												
.05	151.48		7.92	74.80			4.51														
843.11	44,117.85		26,967.68	675.95	90.00	28.49	4,862.51	3,502.80				18.21				1,921.91	591.68		5,460.62		
13,048.89*	60,141.78	2,077.45				97.96	88.56		55,125.65	1,384.32	235.24	17.34		954.22	158.84		8.40				
40,098.45																					
497.90	10,543.01		846.92	546.88	1,834.00	315.11	3,472.78				21.89	2,050.33		77.88	17.73		253.30	104.19			
27,543.46	70,684.79	2,077.45	846.92	546.88	1,834.00	413.07	3,561.34		55,125.65	1,384.32	256.93	3,067.67		1,032.10	170.57		261.70	104.19			
	76,858.85		7,219.68		69,026.00		3.84										9.33				
	2,676.64		2,593.44					83.20													
	78,735.49		9,813.12		69,026.00		3.84	83.20									9.33				
	36,906.33	9,810.83	25,466.00		44.00	114.24	170.13	760.00			303.35	87.66		84.02	105.06		61.44				
16.37	106,878.27	106,699.50			6.00	.77	9.80	51.20		104.57	3.05				3.00						
16.37	143,784.60	116,509.33	25,466.00		50.00	115.01	179.93	811.20		104.57	306.38	87.66		84.02	108.06		61.44				
1,604.52	1,676.74					53.53	1,540.27		32.77	43.17											
3.50	3,228.74		176.40	1,059.22			1,347.50		605.81	34.89		2.97		1.65							
54.84	10,442.11						7,765.31	676.80													
22.76*	107.42					33.30	1.28		.04		30.59	38.95			3.17						
	.33					.33															
	4.50						4.50														
561.25	6,504.86		1,096.44	466.25	220.00	62.57	1,970.98			.84		21.28				57.12	2,609.38				
	3,364.94		10.20	333.95	2,558.00	442.37	298.43			89.34		45.45		15.87	71.51		99.20	1.68			
	5,726.07	38.66														5,726.07					
	7,569.89						7,531.23														
	12,926.32						12,926.32														
2,201.35	52,152.02	38.66	1,283.04	1,859.02	2,778.00	592.19	35,386.23	676.80	646.62	168.24	30.59	108.85		15.87	74.33	5,783.19	2,708.58	1.68			
6,684.24	39,423.27	34.25	84.44		38.00	132.63	6,427.76		22,289.84	3,165.67	1,510.15	604.04		3,382.00	1,505.79		60.48	12.64			
1,944.56	9,847.71	173.55	1.92		550.00	480.62	197.84		807.05	1,246.49	1,053.49	207.65		3,108.34	1,998.48		32.48	5.12			
8,628.80	49,270.98	207.80	86.36		592.00	613.25	6,625.60		23,096.89	4,412.16	2,563.64	811.69		6,490.34	3,504.27		92.96	17.76			
39,233.09	438,995.73	118,829.83	64,443.14	3,083.85	74,370.00	1,762.21	50,819.45	5,074.00	78,868.14	6,069.69	3,357.84	4,084.88		7,528.13	3,859.23	7,707.10	3,795.92	138.90	5,460.62		

* Figures in colum 8 above marked * represent reimbursed expenditures.

EXHIBIT "H": This exhibit reflects the charge which is made for labor, materials, supplies, and departmental services to all direct operating accounts. Not shown are the charges from these same sources to overhead accounts, capital accounts, and service departments. Overhead accounts fall within the following categories: employees' service expenses, administration and staff expense, general expense, and sundry expense.

[Title of District Court and Cause.]

AMENDMENT TO STIPULATION

It Is Hereby Stipulated by and between Waialua Agricultural Company, Limited, plaintiff herein, by and through Rufus G. Poole, Livingston Jenks and Ernest C. Moore, Jr., its attorneys, and Ciraco Maneja, Antone Vierra, Augustine Lorenzo, Haru Kibota, Tadao Watanabe, Koichi Okouchi, Tsuruo Hayashi, Cornelio Asuncion, Roque Crisostomo, Peter Holmberg, Hatsusuke Sera, Takumi Okouchi, Pedro Dumlao, Bernabe Hernandez, Domingo Guigui, Ushinosuke Kondo, Teruichi Kubo, Masaiki Oato, Simon Cumlat, Apolonio Lazo, Giichi Hamamoto, Dionicio Carrit, Seraphine Robello, Toshio Tanaka, Barney Faria, Fumio Sunahara, Hirosaku Takata, Alfred Reyher, Masaru Ezawa, Damaso Claunan, Antone Robello, Yoshiji Yamada, Edwin Mori, Genjiro Hironaka, Jiro Sakai, Margaret Fujiwara, Louis Pacheco, Yukishige Tsutsui, Yack Chun Lee, Eiko Sakaguchi, Moses Fernandez and Toshio Kashiwabara, defendants herein, by and through their attorney, Richard Gladstein, in Civil Action [2027] No. 787, that the Stipulation filed herein on August 30, 1950, be and the same hereby is amended in the following respects:

1. Numbered paragraph 61 of said Stipulation, relating to Seraphine Robello, Power Plant Operator, is hereby amended by adding a new paragraph in the Explanatory Notes in said numbered paragraph, on page 451 of said Stipulation, which new

Waiakea Mill Co.	9/17/39	1/ 6/40	4/20/41	5/24/41	6/ 7/42	7/11/42	4/11/43	5/ 8/43	12/24/44	1/27/45	12/23/45	1/ 5/46
	6/16/40	7/13/40	6/29/41	8/ 2/41	10/25/42	1/ 9/43	10/31/43	1/15/44				
	9/ 1/40	11/23/40	10/19/41	1/10/42								
	12/ 1/40	1/11/41										
MAUI												
Pioneer Mill Co.	1/ 1/40	2/ 8/40	1/ 1/41	1/ 5/41	1/ 1/42	1/12/42	1/ 1/43	1/14/43	1/ 1/44	1/ 9/44	1/ 1/45	1/15/45
	11/20/40	12/31/40	10/26/41	12/31/41	11/22/42	12/31/42	11/21/43	12/31/43	10/16/44	12/31/44	10/31/45	12/31/45
Wailuku Sugar Co.	5/19/40	6/24/40	12/21/41	1/31/42	11/29/42	1/30/43	8/ 3/43	8/18/43	2/24/44	3/13/44	8/13/45	9/ 5/45
	12/22/40	2/ 1/41					11/14/43	1/ 8/44	8/ 9/44	9/ 6/44	12/ 9/45	2/ 9/46
									11/ 5/44	1/20/45		
Hawaiian Commercial & Sugar Co.	9/11/40	1/ 6/41	9/20/41	1/ 8/42	11/26/42	1/26/43	12/ 2/43	1/26/44	11/13/44	1/29/45	11/11/45	1/21/46
Maui Agricultural Co.	6/14/40	10/ 1/40	6/14/41	9/15/41	12/20/42	2/ 1/43	12/ 4/43	1/17/44	12/22/44	2/19/45	12/28/45	3/25/46
	12/20/40	1/ 6/41										
OAHU												
Waimanalo Sugar Co.	12/26/40	2/14/41	12/15/41	3/ 1/42	12/30/42	2/ 9/43	12/25/43	2/25/44	12/23/44	3/11/45	11/30/45	2/17/46
Kahuku Plantation Co.	10/22/40	1/20/41	11/ 4/41	2/23/42	11/13/42	1/25/43	9/30/43	1/11/44	10/17/44	1/22/45	10/20/45	2/15/46
Waialua Agricultural Co.	11/ 9/40	1/ 7/41	9/ 6/41	1/23/42	10/ 9/42	1/21/43	10/ 7/43	1/16/44	9/21/44	1/ 8/45	10/ 6/45	1/14/46
Waianae Co.	1/ 1/40	1/ 9/40	1/ 1/41	1/22/41	1/ 1/42	1/31/42	1/ 1/43	2/19/43	1/ 1/44	2/ 9/44	1/ 1/45	1/10/45
	9/23/40	12/31/40	7/24/41	9/ 1/41	12/11/42	12/31/42	11/17/4†	12/31/43	10/ 5/44	12/31/44	4/ 6/45	5/30/45
			10/ 7/41	12/31/41							10/27/45	12/31/45
Ewa Plantation Co.	11/19/40	1/20/41	11/ 3/41	2/16/42	11/20/42	1/11/43	11/16/4†	1/24/44	11/ 4/44	1/15/45	12/13/45	2/14/46
Oahu Sugar Co.	1/ 1/40	1/18/40	1/ 1/41	1/24/41	1/ 1/42	1/22/42	1/ 1/43	2/ 3/43	1/ 1/44	2/ 3/44	1/ 1/45	1/ 8/45
	7/28/40	10/11/40	8/ 4/41	9/11/41	12/28/42	12/31/42	12/ 1/43	12/31/43	8/28/44	11/ 4/44	4/ 7/45	5/ 7/45
	12/18/40	12/31/40	12/22/41	12/31/41					12/29/44	12/31/44	8/27/45	11/26/45
											12/30/45	12/31/45
•Honolulu Plantation Co.	11/28/39	2/ 5/40	4/25/41	5/26/41	12/27/42	2/15/43	12/ 4/4†	2/ 6/44	9/23/44	6/ 3/45		
	9/28/40	11/ 6/40										
	12/25/40	2/10/41										
KAUAI												
Kekaha Sugar Co.	1/ 1/40	1/13/40	1/ 1/41	2/10/41	1/ 1/42	2/12/42	1/ 1/4†	2/25/43	1/ 1/44	†/11/44	1/ 1/45	2/19/45
	12/16/40	12/31/40	11/30/41	12/31/41	12/ 3/42	12/31/42	11/ 2/43	12/31/43	11/ 9/44	12/31/44	11/22/45	12/31/45
Waimea Sugar Co.	1/ 1/40	2/ 6/40	1/ 1/41	2/ 5/41	1/ 1/42	2/ 4/42	1/ 1/4†	3/ 3/43	1/ 1/44	10/23/44	1/ 1/45	2/19/45
	10/14/40	10/30/40	9/22/41	9/30/41	12/ 5/42	12/17/42	1/ †/43	12/31/43	10/ 1/44	10/23/44	11/22/45	12/31/45
	12/15/40	12/31/40	10/28/41	12/31/41					11/10/44	12/31/44		
Alokele Sugar Co.					11/15/42	2/ 5/43	11/ 1/43	2/ 8/44	11/11/44	2/ 5/45	11/14/45	2/16/46
McBryde Sugar Co.	6/28/40	8/18/40										
	11/10/40	1/ 3/41	10/25/41	1/ 9/42	12/ 9/42	1/28/43	11/13/43	1/ 3/44	11/ 1/44	1/10/45	10/19/45	1/ 3/46
Koloa Sugar Co.	9/19/40	11/ 2/40	12/ 7/41	12/31/41	1/ 1/42	1/12/42	1/ †/43	2/ 6/43	1/ 1/44	2/ 7/44	1/ 1/45	2/10/45
	12/15/40	12/31/40					1/ 6/43	12/31/43	10/30/44	12/31/44	12/10/45	12/31/45
Grove Farm Co.									8/10/44	11/12/44	8/ 2/45	12/ 2/45
									12/26/44	12/31/44	12/23/45	12/31/45
Lihue Plantation Co.	8/12/40	11/ 2/40	1/ 1/41	1/ 4/41	11/16/42	12/31/42	1/ 1/43	1/ 9/43	8/28/44	11/11/44	8/27/45	12/ 1/45
			9/ 1/41	11/ 1/41			9/13/43	11/13/43	12/26/44	12/31/44	12/23/45	12/31/45
			12/16/41	12/31/41								
Kilauea Sugar Plantation Co.	12/14/40	1/16/41	12/ 1/41	1/12/42	11/24/42	1/18/43	11/10/43	1/ 6/44	11/10/44	1/ 4/45	10/21/45	1/ 6/46

• Sept. 23, 1944-June 3, 1945 Honolulu Plantation Co.—extensive alterations required to eliminate cane hauling by railroad and prepare for hauling cane by trucks.

† Figures illegible.

paragraph shall follow the third paragraph on said page and shall read as follows:

"Furthermore during each workweek of both the grinding seasons and the off-season he started and stopped and serviced and repaired air compressors which furnished compressed air which in each such workweek was used throughout the plantation mill as described in paragraphs 16 to 25, both inclusive, of this Stipulation, and also in the plantation service shops described in paragraphs 26(a) to 26(i), both inclusive, and 26(l), of this [2028] Stipulation."

* * *

7. A new paragraph is added at the end of said Stipulation, to follow paragraph 94 of said Stipulation, to be numbered paragraph 95 and to read as follows:

"95

"Repair, Maintenance and Reconstruction

"None of the work performed by any of the defendants herein during the period from November 20, 1946, to and including September 14, 1947, as hereinabove set forth in this Stipulation, was performed on or in connection with new or original construction of buildings, dwellings or other facilities, but all such work performed by each of said defendants on or in connection with buildings, dwellings or other facilities was performed on or in connection with existing buildings, dwellings or

other facilities and in connection with their repair, maintenance or reconstruction."

Said Stipulation, as originally executed and filed, is hereby ratified, confirmed and approved in all respects other than expressly modified by the provisions of this Amendment to Stipulation.

Dated the 2nd day of September, 1950.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Plaintiff,

By /s/ RUFUS G. POOLE,
By /s/ LIVINGSTON JENKS,
By /s/ ERNEST C. MOORE, JR.,
Its Attorneys.

CIRACO MANEJA, et al.,
Defendants,

By /s/ RICHARD GLADSTEIN,
Their Attorney.

[Endorsed]: Filed September 5, 1950. [2031]

[Title of District Court and Cause.]

AMENDMENT TO AMENDED COMPLAINT

Now comes plaintiff herein, Waialua Agricultural Company, Limited, by its attorneys, and, in accordance with Rule 15(a) of the Federal Rules of Civil Procedure, does hereby amend its Amended Com-

plaint filed herein on August 21, 1950, by striking out paragraph 2 thereof and by inserting in lieu thereof the following:

2. Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Territory of Hawaii, with its head office located in the City and County of Honolulu, Territory of Hawaii, and with a [2033] plantation, where it produces sugar cane, processes it into raw sugar and conducts related operations, located in the District of Waialua, City and County of Honolulu, Territory of Hawaii. Plaintiff herein is a new company, organized as a Hawaiian corporation as aforesaid on December 14, 1948. Prior to said date the business now conducted by plaintiff as aforesaid was conducted by a predecessor corporation which was organized under and by virtue of the laws of the Territory of Hawaii on October 12, 1898, and which also was known as Waialua Agricultural Company, Limited, until December 14, 1948. On December 14, 1948, plaintiff acquired certain of the assets and business of said predecessor corporation, including the business of plaintiff as aforesaid, and assumed certain liabilities of said predecessor corporation, including the liabilities of the predecessor corporation relating to said business as aforesaid. The assets so acquired by plaintiff included all rights and interests of said predecessor corporation in or which might arise out of this action (this action having been instituted by said predecessor corporation prior to December 14, 1948); and the liabilities

so assumed by plaintiff included all liabilities of said predecessor corporation in or which might arise out of this action. The name of said predecessor corporation was on December 14, 1948, changed to Waialua Liquidating Company, Limited. Plaintiff has heretofore been substituted for said [2034] predecessor corporation as party plaintiff in this action. All references hereinafter contained in this Amended Complaint to "plaintiff" which relate to matters which occurred prior to said acquisition of assets and business and assumption of liabilities on December 14, 1948, refer to said predecessor corporation; and all references hereinafter contained in this Amended Complaint to "plaintiff" which relate to matters which occurred after said acquisition of business and assets and assumption of liabilities on December 14, 1948, refer to the new company organized on December 14, 1948, as aforesaid, i.e., the plaintiff in these proceedings.

Dated the 2nd day of October, 1950.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
/s/ ERNEST C. MOORE, JR.,
Attorneys for Plaintiff. [2035]

I consent to the filing of the above Amendment to Amended Complaint; and for and on behalf of the defendants herein I admit the truth of the allegations set forth in said Amendment to Amended Complaint.

/s/ RICHARD GLADSTEIN.

Leave to file the foregoing Amendment to Amended Complaint is hereby granted.

October 2, 1950.

/s/ D. E. METZGER,
Judge of the United States District Court for the District of Hawaii.

[Endorsed]: Filed October 2, 1950. [2036]

[Title of District Court and Cause.]

MOTION TO REOPEN RECORD

The plaintiff moves the Court for an order reopening the record herein to permit the filing of an amendment to the Stipulation filed herein on August 30, 1950, as amended by Amendment to Stipulation filed on September 5, 1950, so that said Stipulation may conform to the Amendment to Amended Complaint filed herein on October 2, 1950.

Dated Honolulu, T. H., this 2nd day of October, 1950.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
/s/ ERNEST C. MOORE, JR.,
Attorneys for Plaintiff.

I consent to the allowance of the above Motion.

/s/ RICHARD GLADSTEIN,
Attorney for the
Defendants. [2038]

[Title of District Court and Cause.]

ORDER REOPENING RECORD

Upon motion of the plaintiff, which motion was consented to by defendants, and it appearing to be just to the Court, it is ordered that the record herein be reopened to permit the filing of an amendment to the Stipulation filed herein on August 30, 1950, as amended by Amendment to Stipulation filed on September 5, 1950, so that said Stipulation may conform to the Amendment to Amended Complaint filed herein on October 2, 1950.

Dated Honolulu, T. H., this 2nd day of October, 1950.

/s/ D. E. METZGER,
Judge of the United States District Court for the District of Hawaii.

[Endorsed]: Filed October 2, 1950. [2039]

[Title of District Court and Cause.]

SECOND AMENDMENT TO STIPULATION

It Is Hereby Stipulated by and between Waialua Agricultural Company, Limited, plaintiff herein, by and through Rufus G. Poole, Livingston Jenks and Ernest C. Moore, Jr., its attorneys, and Ciraco Maneja, Antone Vierra, Augustine Lorenzo, Haru Kibota, Tadao Watanabe, Koichi Okouchi, Tsuruo Hayashi, Cornelio Asuncion, Roque Crisostomo, Peter Holmberg, Hatsusuke Sera, Takumi Okouchi, Pedro Dumlao, Bernabe Hernandez, Domingo Guigui, Oshinosuke Kondo, Teruichi Kubo, Masaiki Oato, Simon Cumlat, Apolonio Lazo, Giichi Hamamoto, Dionicio Carrit, Seraphine Robello, Toshio Tanaka, Barney Faria, Fumio Sunahara, Hirosaku Takata, Alfred Reyher, Masaru Ezawa, Damaso Claunan, Antone Robello, Yoshiji Yamada, Edwin Mori, Genjiro Hironaka, Jiro Sakai, Margaret Fujiwara, Louis Pacheco, Yukishige Tsutsui, Yack Chun Lee, Eiko Sakaguchi, Moses Fernandez and Toshio Kashiwabara, defendants herein, by and through Richard Gladstein, their attorney, in Civil Action [2041] No. 787, that the Stipulation filed herein on August 30, 1950, as amended by Amendment to Stipulation filed herein on September 5, 1950, be and the same hereby is further amended in the following respect:

Numbered paragraph 1 of said Stipulation, relating to the name and location of the Company, is hereby amended so that said numbered paragraph 1 shall read as follows:

"Waialua Agricultural Company, Limited, hereinafter sometimes referred to as the 'Plantation'[1] or 'Company,' is a corporation duly organized and existing under and by virtue of the laws of the Territory of Hawaii, with its head office located in the City and County of Honolulu, Territory of Hawaii, and with a plantation, where it produces sugar cane, processes it into raw sugar and conducts related operations, located in the District of Waialua, City and County of Honolulu, Territory of Hawaii. The Plantation is a new company, organized as a Hawaiian corporation as aforesaid on December 14, 1948. Prior to said date the business now conducted by the Plantation as aforesaid was conducted by a predecessor corporation which was organized under and by virtue of the laws of the Territory of Hawaii on October 12, 1898, and which also was known as Waialua Agricultural Company, Limited, until December 14, 1948. On December 14, 1948, the Plantation acquired certain of the assets and business of said predecessor corporation, including the business of the Plantation as aforesaid, and assumed certain liabilities of said predecessor corporation, including the liabilities of the predecessor corporation relat-

[1]The term "Plantation" is also used in this stipulation to mean the geographical area on which the Waialua Agricultural Company, Limited, is producing sugar cane, processing it into raw sugar and conducting related operations.

ing to said business as aforesaid. The assets so acquired by the Plantation included all rights and interests of said predecessor corporation in or which might arise out of this action (this action having been instituted by said predecessor corporation prior to December 14, 1948); and the liabilities so assumed by the Plantation included all liabilities of said predecessor corporation in or which might arise out of this action. The name of said predecessor corporation was on December 14, 1948, changed to Waialua Liquidating Company, Limited. The Plantation has heretofore been substituted for said [2042] predecessor corporation as party plaintiff in this action. All references hereinafter contained in this Stipulation to 'Waialua Agricultural Company, Limited,' or to the 'Plantation' or 'Company' which relate to matters which occurred prior to said acquisition of assets and business and assumption of liabilities on December 14, 1948, refer to said predecessor corporation; and all references hereinafter contained in this Stipulation to 'Waialua Agricultural Company, Limited,' or to the 'Plantation' or 'Company' which relate to matters which occurred after said acquisition of business and assets and assumption of liabilities on December 14, 1948, refer to the new company organized on December 14, 1948, as aforesaid, i.e., the plaintiff in these proceedings."

Said Stipulation, as originally executed and filed and as amended by Amendment to Stipulation filed September 5, 1950, is hereby ratified, confirmed and approved in all respects other than expressly modified by the provisions of this Second Amendment to Stipulation.

Dated the 2nd day of October, 1950.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Plaintiff,

By /s/ RUFUS G. POOLE,
By /s/ LIVINGSTON JENKS,
By /s/ ERNEST C. MOORE, JR.,
Its Attorneys.

CIRACO MANEJA, et al.,
Defendants,

By /s/ RICHARD GLADSTEIN,
Their Attorney.

[Endorsed]: Filed October 2, 1950. [2043]

In the United States District Court
for the Territory of Hawaii

Civil No. 787

WAIALUA AGRICULTURAL COMPANY, LTD.,

Plaintiff and Cross-Defendant,

vs.

CIRACO MANEJA, et al.,

Defendants and Cross-Claimants.

OPINION AND DECISION OF COURT CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW

* * *

PART III.

Findings of Fact

Agricultural Activities

1. Certain of the defendants were attached to the Field Operations Department, engaging chiefly in various field activities. At times, some of them were shifted for varying periods to the performance of work in one or another of the shops, or elsewhere on the plantation in non-agricultural activity. These defendants are:

Maneja, Lorenzo, Kibota, Asuncion, Hayashi, Okouchi (K.), and Watanabe.

2. Ciraco Maneja. This defendant was employed during certain periods to operate a tractor in the cane fields; on other occasions, his employment was that of a mechanic, making repairs in the tractor repair shop; in some weeks,* a combination of these duties.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 2, 23, 30; Jan. 6, 13, 20; Feb. 3, 17; Mar. 17, 31; Apr. 7, 21, 28; May 5, 26; June 30; Aug. 24; Sept. 1.

Weeks during which overtime was properly not paid for hours worked between 40 and 48, because all activities performed consisted of operating tractor in fields, clearing rocks from fields, weeding, cleaning irrigation ditches and flumes, and otherwise preparing cane fields for planting, with the addition that during [2114] 3 weeks this employee performed incidental work of transporting agricultural labor to and from places of field work (June

*Throughout these findings, the word "week" refers to the employee's workweek; each workweek is identified by the date on which it commenced for the particular employee. Due to operation of several shifts, and the transfer of employees from one shift to another, the beginning date of a workweek was frequently not the same for all defendants.

Unless the context otherwise indicates, all subsequent references to the months of November and December refer to those months in the year 1946; and all references to the months of January to September, inclusive, refer to such months in the year 1947.

15 (½ hour); Aug. 10 (5½ hours); Sept. 7 (3 hours))—exemption under Section 13(a)(6) applicable:

> Mar. 24; Apr. 14; May 19; June 2, 9, 15, 23; July 6, 14, 21, 28; Aug. 4, 10, 18; Sept. 7 (48 hours worked in each week, except June 15 (48½); July 21 (44); Aug. 10 (51½); Sept. 7 (63)).

Weeks during which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as some activities in each week were non-exempt; in these weeks his duties were those of a mechanic and machinist, working in the tractor repair shop, making repairs and performing general overhauling work on tractors, tractor parts, and various other machines and implements, and in the mill yard, repairing cane cars (except Jan. 6, 13, overtime paid; plaintiff denies this was obligatory):

> Dec. 9: 34 hours repairing Tractors #106, 131, 132, 136; 3 hours repairing Tractor Auxiliary Implement #252; 11 hours ratooning.
>
> Dec. 16: 48 hours repairing Tractors #105, 139.
>
> Jan. 6: 16 hours repairing Tractors #108, 137; 16 hours operating tractor to remove rocks and cement from mud press pit at mill in widening operation performed during off-season; 16 hours ratooning.
>
> Jan. 13: 8 hours repairing Tractors #110, 114, 116; 2½ hours teaching tractor helper

how to operate Tractor Auxiliary Implement #259C; 37½ hours ratooning and plowing.

Jan. 27: 17 hours repairing Tractors #134, 136, 138; 29½ hours plowing and clearing rocks from a cane field.

Feb. 10: 7 hours repairing Tractors #119, 139, 143; 11 hours repairing Tractor Auxiliary Implement #251A; 30 hours ratooning and plowing.

Feb. 24: 32 hours repairing Tractors #103, 115; 16 hours ratooning.

Mar. 3: 6 hours repairing Tractors #102, 103; 4 hours repairing Tractor Auxiliary Implements #203, 281, 284; 38 hours ratooning and other field work.

Mar. 10: 2½ hours repairing Tractor #103; 5½ hours repairing Tractor Auxiliary Implement #284; 40 hours field work.

May 12: 8 hours in mill yard repairing cane cars; 40 hours in field work. [2115]

Regular hourly rate of pay, week commencing:

Dec. 9-May 26, $.99; June 2-July 21, $1.02; July 28, $1.05; Aug. 4-Sept. 7, $1.10.

Amount unpaid and due: $30.94.

3. Cornelio Asuncion. This defendant was employed principally to operate a haul cane tractor in fields; in off-season, his duties consisted largely of repairing tractors in the tractor repair shop.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 2, 16, 23, 30; Jan. 6; Feb. 3, 24; Mar. 31; May 26; June 30; July 28; Aug. 25; Sept. 1.

Weeks during which overtime was properly not paid for hours worked between 40 and 48, because he operated tractor to haul cane cars to and from main line railroad, put dirt under portable track in fields for leveling purposes, plowed, cleared rocks from field in preparation for plowing, removed mud from portable track lines, performed minor emergency repairs on agricultural equipment and portable track in cane fields, cut cane, unloaded and reloaded cane cars—exemption under Section 13(a) (6) applicable:

Mar. 10, 24; Apr. 7, 14, 21, 28; June 2, 9, 16, 23; July 7, 14, 21; Aug. 4, 11, 18; Sept. 8.

Weeks during which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as a substantial part of his activities in each was non-exempt, as detailed below:

Dec. 9: 43 hours repairing portable track in repair station; 5 hours hauling cane cars.

Jan. 13: 48 hours repairing Tractors #108, 110, 114.

Jan. 20: 48 hours repairing Tractors #108, 110.

Jan. 27: 16½ hours repairing Tractors #108, 110; 31½ hours plowing.

Feb. 10: 6 hours cutting trees for firewood; 42 hours hauling cane cars.

Feb. 17: 14½ hours cutting trees for firewood; ½ hour putting dirt under portable track; 33 hours hauling cane cars. [2116]

Mar. 3: 1 hour repairing portable track in fields; 5 hours working on pile-up of cane cars in locomotive wreck; 48 hours hauling cane cars.

Mar. 17: 14 hours repairing Tractor #108 in tractor repair shop; 5 hours dislodging rails; 21 hours hauling cane cars; 8½ hours preparing fields for plowing.

May 5: 7 hours cutting trees along main line railroad to eliminate obstructions; 5 hours putting dirt under portable track; 33½ hours hauling cane cars; 3½ hours making stakes used as markers in connection with planting.

May 12: 1 hour cutting trees along main line railroad; 3 hours repairing portable track in the fields; 43 hours hauling cane cars.

May 19: 5 hours cutting trees along main line railroad; 2½ hours cutting trees for clearance along electric transmission lines; ½ hour repairing portable track in fields; 40 hours hauling cane cars.

This employee's hourly rate of pay varied considerably; for weeks for which recovery is due, the hourly rate of pay was as follows:

Dec. 9-Jan. 27, $1.02; Feb. 10, Mar. 3, $1.06; Feb. 17, $1.12; Mar. 17, $1.10; May 5, $1.11; May 12, $1.19; May 19, $1.28.

Amount unpaid and due: $47.41.

4. Tsuruo Hayashi. This defendant was employed principally to operate a caneloading machine (crane) in fields. At other times he worked as a mechanic in the caneloading machine repair shop, repairing machines, truck attachments, portable track, and other equipment.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

> Nov. 18, 25; Dec. 9, 23, 30; Mar. 17, 31; May 26; June 30; Aug. 25; Sept. 1.

Weeks for which overtime was properly not paid for hours worked between 40 and 48, because his activities consisted entirely of operating caneloading machines in fields to cut and load cane, except that in the week commencing Aug. 18 he also operated tractor in raking cut cane (2 hours) and clearing stones by hand from cane field (2 hours) —exemption under Section 13(a)(6) [2217] applicable:

> Feb. 17; Mar. 3; Mar. 24; Apr. 14, 21, 28; May 5, 12; June 2, 9, 16, 23; July 7, 14, 21, 28; Aug. 4, 11, 18; Sept. 8.

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as a part of his activities in each week was nonexempt, as detailed below, all repairs being performed in the shop:

> Dec. 2: 15½ hours repairing Caneloading Machine #302; 36 hours operating caneloading machine in fields.

Dec. 16: 21½ hours repairing Caneloading Machines #301, 303, 305, 307; 28½ hours operating caneloading machine in fields.

Jan. 6: 48 hours repairing Caneloading Machine #303.

Jan. 13: 48 hours repairing Caneloading Machines #303, 306.

Jan. 20: 48 hours repairing Caneloading Machines #303, 304.

Jan. 27: 48 hours repairing Caneloading Machines #301, 302, 303, 304, 307, and in cleaning caneloading machine repair shop.

Feb. 3: 46 hours repairing Caneloading Machines #303, 304; 2 hours operating caneloading machines in fields.

Feb. 10: 8 hours repairing Caneloading Machine #303; 42 hours operating caneloading machines in fields.

Feb. 24, Mar. 10, May 19: 51 hours in each week principally repairing Caneloading Machine #306, but also operating caneloading machine in fields.

Apr. 7: 17½ hours repairing parts for all caneloading machines; 32½ hours operating caneloading machine in fields.

Regular hourly rate of pay, week commencing:

Dec. 2, 16, $1.12; Jan. 6-Feb. 3, $1.10; Feb. 10, $1.15; Feb. 24, $1.19; Apr. 7, $1.14.

Amount unpaid and due: $44.88.

5. Koichi Okouchi. This defendant was employed principally to operate a tractor in leveling track lines to make beds for portable track in cane fields. As to this defendant, "leveling track lines" means lines in cane fields. At other times he was assigned as a mechanic, either in the section repair station or tractor repair shop, to repair rail, machinery, and equipment.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime [2118] pay:

Nov. 18, 25; Dec. 23, 30; Mar. 31; Apr. 14; May 26; June 30; Aug. 25; Sept. 1.

Weeks for which overtime was properly not paid for hours worked between 40 and 48, because his work consisted of operating tractor in fields to make beds for portable track, maintaining irrigation ditches, picking up scattered cane in fields, preparing fields for planting, making minor repairs in fields to portable track or equipment—exemption under Section 13(a)(6) applicable:

Mar. 3; Apr. 28; May 5; June 2, 16, 23; July 7, 14, 21, 28; Aug. 4, 11, 18; Sept. 8.

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as a part of his activities in each week was nonexempt, as detailed below—all repairing was performed at one of the shops, unless otherwise indicated:

Dec. 2, 9: 48 hours in each week, repairing track in section repair station in plaintiff's yard adjoining the buildings, and leveling track lines.

Dec. 16: 16½ hours repairing track at section repair station; 1½ hours moving portable track in fields; 24 hours leveling track lines.

Jan. 6: 24 hours repairing track at section repair station; 24 hours repairing Tractors #107, 119, 137, at tractor repair shop.

Jan. 13: 48 hours repairing Tractors #107, 110, 114, 119.

Jan. 20: 47 hours repairing Tractors #108, 110, 111, 138; 1 hour repairing Tractor Auxiliary Implement #248.

Jan. 27: 46 hours repairing Tractors #109, 110, 111, 114, 138, 151, 152.

Feb. 3: 12 hours repairing Tractors #134, 138, 140, 142; 14 hours repairing Tractor Auxiliary Implements #254, 289, 289A; 5 hours in tractor repair shop repairing portable pump used for drainage and irrigation ditches; 5 hours repairing portable track at section repair station; 6½ hours leveling track lines; 4½ hours laying temporary main line railroad on plantation railway adjoining a harvesting field; 1 hour cutting firewood.

Feb. 10: 3½ hours repairing track at section repair station; 2½ hours clearing fields of tree stumps; 42 hours leveling track lines. [2119]

Feb. 17 (48 hours), Feb. 24 (43½ hours):

All hours spent in laying, or removing to storage at mill yard, temporary main line railroad, clearing fields of stumps, and leveling track lines.

Mar. 10: 4 hours dislodging for removal to storage, rails placed on plantation by U. S. Army as lessee of part of premises during the war; 2 hours repairing track at section repair station; 39½ hours leveling track lines; 3 hours preparing fields for planting.

Mar. 17: 12½ hours dislodging rails previously laid by U. S. Army; 9 hours removing temporary main line railroad to storage; 23 hours leveling track lines.

Mar. 24: 3½ hours dislodging rails as above; 4 hours removing temporary main line railroad as above; 1 hour repairing portable track in fields; 39½ hours leveling track lines.

Apr. 7: 4½ hours removing temporary main line railroad as above; 45 hours leveling track lines.

Apr. 21: 1½ hours repairing portable track at section repair station; 3 hours repairing track in cane fields; 2 hours servicing rail cars in fields; 41¾ hours leveling track lines.

May 12: 1½ hours repairing track at section repair station; 8¾ hours cutting firewood; 37¾ hours leveling track lines.

May 19: 8¼ hours cutting firewood; 3¾ hours repairing portable track in fields; ½ hour preparing fields for planting; 35¾ hours leveling track lines.

June 9: 1 hour repairing track at section repair station; 2¾ hours repairing track in fields; 44½ hours leveling track lines.

Regular hourly rate of pay, week commencing:

Dec. 2, $1.15; Dec. 9, $1.12; Dec. 16, $1.11; Jan. 6-Feb. 3, $.97; Feb. 10, $1.04; Feb. 17, 24, $1.03; Mar. 10, $1.36; Mar. 17, $1.08; Mar. 24, $1.15; Apr. 7, $1.13; Apr. 21, $1.23; May 12, $1.26; May 19, $1.43; June 9, $1.54.

Amount unpaid and due: $77.02.

6. Tadao Watanabe. This defendant was principally employed as a rake operator in the fields. At other times he was employed as a mechanic in the tractor repair shop, to repair tractors and plaintiff's grader.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 2, 23, 30; Jan. 6; Mar. 31; May 26; June 30; Aug. 25; Sept. 1. [2120]

Weeks for which overtime was properly not paid for hours worked between 40 and 48, because his work consisted in burning cane, in operating tractor in cane fields, making fire brakes, working on track lines for laying of portable track, and bulldozing cane into piles—exemption under Section 13(a)(6) applicable:

Feb. 10; Mar. 24; Apr. 14; May 5; June 2, 9, 16, 23; July 7, 14, 28; Aug. 4, 11, 18.

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as part of his activities in each week was non-exempt, as detailed below—all repairing was performed at one of the shops, unless otherwise indicated) except Jan. 6, overtime paid; plaintiff denies this was obligatory):

Dec. 9: 48 hours repairing Tractors #121, 122, 132, 136.

Dec. 16: 47 hours repairing Tractors #114, 119; 1 hour repairing Tractor Auxiliary Implement #234.

Jan. 6: 8 hours repairing Tractors #108, 137; 18 hours repairing Tractor Auxiliary Implements #232, 233A, 234; 2 hours repairing grader; 14 hours constructing banks for disposal area for mill trash; 2 hours repairing Caneloading Machine #307 in field; 4½ hours operating tractor to remove rocks and cement from mud press pit at mill.

Jan. 13: 4 hours repairing Caneloading Machine #306 at caneloading machine repair shop; 4½ hours repairing and servicing Caneloading Machines #306 and 307 in fields; 43½ hours constructing banks for disposal area for mill trash.

Jan. 20: 23 hours repairing Tractor #114 at tractor repair shop; 14 hours repairing Tractor Auxiliary Implements #241 and 244; 3 hours constructing banks for disposal area as above; 3 hours operating tractor in fields; ½

hour servicing Caneloading Machine #306 in fields.

Jan. 27: 48 hours repairing Tractors #104, 108, 114, 115, 140, 151, 152.

Feb. 3: 29½ hours repairing Tractors #115, 126, 140, 141; 6 hours repairing Tractor Auxiliary Implement #244; 13½ hours operating tractors in fields.

Feb. 17: 5½ hours repairing Tractors #115 and 130; 1½ hours repairing Tractor Auxiliary Implement #232; 41 hours operating tractor in fields.

Feb. 24: 17 hours repairing Tractors #112, 127, 137; 2½ hours picking up portable track rails in field for removal; 25½ hours operating tractor in fields. [2121]

Mar. 3: 4 hours repairing Tractor #103; 44 hours operating tractor in fields.

Mar. 10: 4 hours repairing grader; 46 hours operating tractor in fields; 2½ hours burning cane.

Mar. 17: 6½ hours repairing Tractors #104, 105, 118, 119; 1½ hours repairing Tractor Auxiliary Implement #246; 4 hours leveling cane fields for laying of portable track; 32½ hours operating tractor in fields; ½ hour burning cane.

Apr. 7: 6½ hours repairing Tractors #102, 119, 126; 2 hours repairing tractor repair shop equipment; 41¾ hours operating tractor in fields.

Apr. 21: 7 hours repairing Tractor #114;

2 hours repairing Tractor Auxiliary Implement #231A; 40½ hours operating tractor in fields; ¼ hour burning cane.

Apr. 28: 6 hours repairing Tractors #102, 189; 4 hours repairing Tractor Auxiliary Implement #201A; 38 hours operating tractor in fields.

May 12: 4½ hours repairing Tractor #104; 1 hour cutting trees to clear cane fields; 4 hours burning cane; 41½ hours operating tractor in fields.

May 19: 10 hours repairing Tractors #104 and 105; ½ hour burning cane; 38 hours operating tractor in fields.

July 21: 2 hours repairing Group II tractors; 2 hours burning cane; 47 hours operating tractor in fields.

Sept. 8: 4½ hours repairing Group II tractors; 2½ hours operating tractor to lay portable track in fields; 44½ hours operating tractor in fields.

Regular hourly rate of pay, week commencing:

Dec. 9-Jan. 27, $1.02; Feb. 3, $1.05; Feb. 17, Apr. 21, 28, May 19, $1.12; Feb. 24, Mar. 17, $1.10; Mar. 3, $1.14; Mar. 10, May 12, $1.13; Apr. 7, $1.11; July 21, $1.25; Sept. 8, $1.33.

Amount unpaid and due: $71.50.

Railroad Activities

7. A number of the defendants were employed in the operation of plaintiff's railroad system.

8. Peter Holmberg. This defendant was employed as a locomotive engineer on plaintiff's main line railroad. He operated locomotives engaged in a variety of hauling activities, including the hauling of cane cars, loaded and empty, molasses tank cars, freight cars, and transportation of freight, equipment and various supplies, including lumber, acid, oil, scrap [2122] iron, machinery and fertilizer. During the grinding season, plaintiff's engineers worked on a 3-shift basis: 1st shift, 2 p.m. to 10 p.m.; 2nd shift, 10 p.m. to 6 a.m.; 3rd shift, 6 a.m. to 2 p.m. In off-season, one day shift and one night shift were operated. Holmberg was switched from one shift to another, during both seasons. At times he performed repair work on locomotives, such work being done in the machine shop, welding shop, roundhouse and adjacent areas.

Weeks in which he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 24; Dec. 16, 23, 30; Jan. 6, 13, 20, 27; Feb. 3; Mar. 10, 30; Apr. 7, 14; May 19, 26; June 1, 23, 30; July 28; Arg. 11, 25; Sept. 1.

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as all or much of his activities in each week were non-exempt:

Feb. 10, 23; Mar. 3, 17, 23; Apr. 27; May 4; July 6, 13; Aug. 18: All hours, 48 in each week, except Mar. 3 (64), hauling cane cars.

Apr. 21 (51 hours); July 21 (60½ hours);

Aug. 4 (51 hours); Sept. 8 (49½ hours): All hours hauling portable track rail cars and cane cars.

June 8: 47½ hours hauling cane cars; ½ hour operating locomotive to switch broken cane cars to repair station in mill yard.

Dec. 2: 8 hours repairing Locomotive #5; 40 hours hauling cane cars.

Dec. 9: 16 hours repairing Locomotive #7; 2¾ hours hauling portable track rail cars; 31¼ hours hauling cane cars.

Feb. 16: 1 hour repairing main line of plantation railroad; 47½ hours hauling cane cars.

May 12: 6 hours repairing Locomotive #3; 24 hours repairing the main line of the railroad; 17½ hours hauling cane cars; ½ hour hauling portable track rail cars.

June 16: 24 hours repairing Locomotives #2, 3, 7; 26½ hours hauling cane cars. [2123]

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $1.27; July 28, $1.29; Aug. 4-Sept. 8, $1.32.

Amount unpaid and due: $100.93.

9. Barney Faria. This defendant was employed to make locomotive repairs. This work he performed in the roundhouse, machine shop, welding shop, and adjacent yard areas.

Weeks in which he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 23, 30; Jan. 6, 13, 20, 27; Feb. 3; Mar. 31; May 26; June 30; Aug. 25; Sept. 1.

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities in each week were non-exempt (in these weeks this employee's activities were for the hours, and at the work, indicated): Jan. 6, 13, 20, 27; Feb. 3—overtime paid; plaintiff denies this was obligatory: [2124]

Week Commencing	Hours Worked	Identification Numbers Given Locomotives Repaired	Other Work
Dec. 2	48	5, 6, 7	
Dec. 9	48	6	
Dec. 16	43	6	
Jan. 6	48	6	
Jan. 13	56	4, 6	
Jan. 20	58	4	
Jan. 27	48	2, 4, 5	
	10		In machine shop, repairing parts for crushing plant.
Feb. 3	56	2, 5	
Feb. 10	48	2, 3, 4, 5, 7	
Feb. 17	48	2, 3, 4, 5, 6, 7, 8	
Feb. 24	48	3, 4, 5, 7	
Mar. 3	56	2, 4, 6, 7	
Mar. 10	56	2, 3, 7	
Mar. 17	48	2, 4, 7	
Mar. 24	48	2, 4, 5, 6	
Apr. 7	48	2, 3, 5, 9	
Apr. 14	40	3, 6	
	3		Machine shop, making parts for new cane seed planting machine.
	5		Machine shop, repairing plumbing shop tools and implements.

Week Commencing	Hours Worked	Identification Numbers Given Locomotives Repaired	Other Work
Apr. 21	48	3, 4	
Apr. 28	48	2, 3, 6	
May 5	48	3, 6	
May 12	48	2, 3, 4	
May 19	48	2, 3, 4, 5, 7	
June 2	48	2, 3, 4	
June 9	48	3, 4, 5, 6, 7	
June 16	48	2, 3, 4, 5, 7	
June 23	47	2, 3, 4, 5, 6	
July 7	50	2, 3, 4	
July 14	48½	2, 4, 5	
July 21	61	3, 4, 5, 6, 9	
July 28	48	2, 3, 4, 6, 7	
Aug. 4	54	4, 5, 6	
Aug. 11	56	2, 4, 5	
Aug. 18	52	2, 3, 4, 5	
Sept. 8	48	2, 3, 5, 6, 7	

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $1.27; July 28, $1.30; Aug. 4-Sept. 8, $1.35.

Amount unpaid and due: $144.91.

10. Hatsusuke Sera. This defendant was employed principally as a sectionhand on the main line of the plantation railroad, but at odd times and for a few hours he was put to work cleaning a plantation reservoir.

Weeks presenting no issue, because he worked no overtime hours:

Nov. 18, 25; Dec 23, 30; Jan. 6; Mar. 31; Apr. 7; May 26; June 23, 30; July 7, 14; Aug. 25; Sept. 1.

In the week Mar. 3, this employee was paid for 10 overtime hours, during which week he worked 58 hours.

In the remaining weeks, this defendant worked overtime hours, receiving only straight-time pay, as follows: Dec. 16 (2 overtime hours); Feb. 24 (4 overtime hours); and in each of the remainder of such weeks, 8 overtime hours:

Dec. 2, 9, 16; Jan. 13, 20, 27; Feb. 3, 10; Mar. 3, 10, 17, 24; Apr. 14; May 5, 12, 19; June 2, 9, 16; July 28; Aug. 4, 11, 18; Sept. 8: Repairing railroad tracks of the main line railroad by replacing worn equipment such as rails, spikes and ties; cleaning and lubricating switches on main line railroad; maintaining rights-of-way of main line railroad by weeding and cutting trees; grading and leveling uneven sections of trackway on main line railroad; installing [2125] and removing field switches for connecting main line railroad to cane field portable track lines; assisting in clearing train wrecks, and repairing derailed locomotives and cars; and otherwise repairing and maintaining main line railroad.

Feb. 17: 40 hours performing work described in first list of workweeks; 8 hours laying temporary main line railroad on plantation roadway adjoining harvesting field.

Feb. 24. 36 hours performing work described in first list of workweeks; 8 hours laying temporary main line railroad on plantation roadway adjoining harvesting field.

April 21: 40 hours performing work described in first list of workweeks; 8 hours cleaning plantation reservoir.

April 28: 8 hours loading railroad ties on freight cars in mill yard; 40 hours cleaning plantation reservoir.

July 21: 24 hours performing work described in first list of workweeks; 16 hours as flagman to direct traffic at railroad crossing of main line railroad; 8 hours laying temporary main line raiload on plantation's roadway adjoining harvesting field.

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $.87; July 28, $.90; Aug. 4-Sept. 8, $.97.

Amount unpaid and due: $97.97.

11. Takumi Okouchi. This defendant was employed on the main line of plaintiff's railroad principally as a flagman at road crossings, and also in maintenance work along the main line.

Weeks presenting no issue, because he worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 23, 30; Jan. 6; Feb. 3; Mar. 16, 31; May 26; June 29; Sept. 1.

In the remaining weeks, this employee worked overtime hours, receiving only straight-time pay, as follows: Dec. 9 (4½ overtime hours); Dec. 16 (2 overtime hours); Jan. 27 (6½ overtime hours);

Feb. 24 (4 overtime hours); and in each of the remainder of such weeks, 8 overtime hours (Feb. 3, overtime paid; plaintiff denies this was [2126] obligatory):

Dec. 2, 9, 16; Jan. 13, 20; Feb. 10, 17, 24; Mar. 24; Apr. 7: Weeding along main line railroad.

Jan. 27: 24 hours laying temporary main line railroad on plantation roadway adjoining a harvesting field; 22½ hours weeding along main line railroad.

Feb. 3: 8 hours repairing cane processing equipment in mill; 40 hours weeding along main line railroad.

Mar. 10; Apr. 14, 20; May 4, 12, 18; June 1, 9, 15, 23; July 7, 13, 21, 27; Aug. 4, 10, 18, 24; Sept. 7: Directing traffic at intersections of public highways and main line railroad in connection with the crossing of public highways by plantation locomotives and trains; clearing debris and fallen cane from intersections where he worked and collecting same into piles at the roadside; scraping and removing dirt accumulated on intersections, and doing maintenance work on rights-of-way of railroad, such as weeding and cutting trees.

Mar. 2: 40 hours in work described immediately above; 8 hours weeding along main line railroad.

Apr. 28: 40 hours in work described in 4th list of workweeks in this finding; 11½ hours weeding main line railroad.

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $.80; July 27, $.81; Aug. 4-Sept. 7, $.88.

Amount unpaid and due: $98.04.

Mill

12. Certain of the defendants were factory workers, employed to operate machinery in the mill. Others in the mill, but not in the operation of processing machinery. Still others, who were attached to the Service Shops Department, performed a certain amount of work in the mill from time to time.

13. Masaiki Oato. From Nov. 20 to Feb. 23, this defendant was an evaporator station employee in the mill. On Feb. 24 he was transferred to the electric shop, a separate structure located near the mill. There he worked as a utility electrician for the balance of the period involved in this case. His work was performed at different places on the plantation, except in the weeks commencing June 2 and 23, when he also performed a small amount of work off the plantation.

He worked no overtime in the weeks [2127] commencing:

Nov. 18, 24; Dec. 15, 23, 30; Feb. 3; Mar. 30; May 19, 26; June 30; July 7; Aug. 25; Sept. 1.

Weeks in which he worked overtime hours for all of which he properly received overtime pay, such hours falling during the off-season when no processing occurred, and when his activities consisted ex-

clusively of repairs to boiling house equipment: Jan. 6, 13, 20, 27.

Weeks for which overtime was properly not paid for hours worked between 40 and 48, because his activities consisted of operating equipment in the mill for boiling sugar juices, and cleaning and making minor repairs to boiling house equipment—exemption under Section (7)(c) applicable: Dec. 1, 9; Feb. 9, 17.

Weeks for which overtime was improperly withheld (after he became an electrician) for hours worked between 40 and 48, inasmuch as, in these weeks, he performed a variety of electrical repair work in the electric shop, hospital, on transmission lines, in dwellings located in plantation villages and occupied by plaintiff's employees, in the power plant, at the main administration office, and at such other places as are shown in greater detail below:

Feb. 24: Electrical repair—2 hours tractor repair shop; 22 hours hospital; 6 hours Pump #3; 4 hours electric transmission lines; 14 hours dwellings.

Mar. 2 (48 hours), Mar. 9 (56 hours), Mar. 17 (48 hours), Mar. 24 (48 hours): All hours in each of these weeks, electrical repair or other work in the power plant.

Apr. 6: Electrical repair—5 hours mill equipment; 2 hours mill yard; 6 hours power plant equipment; other work—33 hours as auxiliary tender in power plant; 11 hours cleaning electric shop.

Apr. 14: Electrical repair—8 hours dwelling; 8 hours service station; other work—32 hours sealing abandoned artesian well in cane fields.

Apr. 21 (51 hours), Apr. 28 (44 hours), May 5 (50½ hours): All hours in each week sealing abandoned artesian wells in cane fields.

May 12: Electrical repair—28 hours dwellings; 1½ hours mill equipment; 12 hours fire room equipment; 6½ hours main administration office. [2128]

June 2: Electrical repair—40 hours mill equipment; 4 hours dwellings; 2 hours electric supply system; 2 hours at a church off of the plantation.

June 9: Electrical repair—37 hours mill equipment; 8 hours transmission lines; 3 hours dwellings.

June 16: Electrical repair—3 hours herbicide station in the mill yard; 11 hours mill equipment; 16 hours dwellings; 2 hours Pump #6, 11; 8 hours electric supply system; other work—8 hours repairing electric shop equipment.

June 23: Electrical repair—2½ hours mill equipment; 6½ hours Pump #10; 9½ hours electric supply system; 8 hours transmission lines; 4 hours dwellings; 1½ hours Waialua Lions Club located off plantation; other work—8 hours repair of machine shop equipment; 8½ hours as auxiliary tender in plantation power plant.

July 14: Electrical repair—7 hours mill equipment; 40 hours dwellings; other work—1½ hours as auxiliary tender in plantation power plant.

July 21: Electrical repair—1 hour irrigation booster pump; 3 hours mill equipment; 31 hours dwellings; other work—13 hours cleaning electric shop.

July 28: Electrical repair—2 hours Pump #3; 38 hours dwellings; other work—8 hours as power plant operator in power plant.

Aug. 4: Electrical repair—3 hours Pump #4; 10 hours mill equipment; 1 hour mill yard; 10 hours dwellings; 8 hours electric supply system; other work—16 hours installing pump at mill.

Aug. 11: Electrical repair—3 hours Pump #14; 8 hours mill equipment; 17 hours transmission lines; 14½ hours dwellings; 3 hours clubhouse 1 hour at church in plantation village; other work—1½ hours installing mill equipment.

Aug. 18: Electrical repair—1 hour mill equipment; 9 hours Pumps #2A and 8; 6 hours dwellings; 1 hour hospital; 1 hour transmission lines; other work—32½ hours installing mill equipment.

Sept. 8: Electrical repair—12 hours mill equipment; 4 hours fireroom equipment; 22½ hours dwellings; 6½ hours independent retail store in plantation village; other work—3 hours

taking water samples from all irrigation [2129] pumps.

Regular hourly rate of pay, week commencing:

Dec. 1-Feb. 17, $.925; Feb. 24, Apr. 14-June 16, July 14, 21, $.83; Mar. 2, Apr. 6, $.85; Mar. 9-24, $.87; June 23, $.84; July 28, $.90; Aug. 4-18, $.91; Sept. 8, $.95.

Amount unpaid and due: $73.78.

14. Dionicio Carrit. This defendant worked in the fireroom, located in the mill. The equipment there consisted of 7 watertube boilers, boiler feeder pumps, 2 condensate pumps, condensate tank, fuel oil pumps, a fuel oil heater, and furnaces. The fireroom burned bagasse to produce steam, which in turn was used (a) to drive the mill engines and cane processing equipment (b) to heat and evaporate the sugar juices; and (c) to generate electric power at the power plant, supply power needed in all the various operations of the plantation, both inside and outside the mill. This employee's activities related partially to the mill operation, but also in large measure and substantial part to the production of power, the generation of electricity for operations throughout the plantation and the handling of [2130] bagasse, an operation separate and apart from sugar processing operations.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours during grinding season for all of which he received overtime pay:

Nov. 18, 24; Dec. 15, 23, 30; Feb. 23; Mar. 30; May 25; June 29; July 6; Aug. 24; Aug. 31.

Weeks in which he worked overtime hours for all of which he properly received overtime pay, such weeks falling during off-season when no processing occurred, and when his activities consisted of cleaning fireroom equipment and laying furnace bricks for reconditioning of the fireroom: Jan. 6, 13, 20, 27; Feb. 3.

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48, during each of which weeks he worked 8 overtime hours, inasmuch as his work consisted of handling and shoveling bagasse, regulating flow of bagasse to furnaces, operating fuel oil pumps and burner, starting and stopping fireroom machinery, watching boiler water levels, and cleaning and making repairs to fireroom equipment during week-end shutdown:

Dec. 1; Feb. 9; Mar. 2, 23; Apr. 13; May 4; June 15; July 27; Aug. 17; Sept. 7: He maintained required steam pressure by regulating flow of bagasse to furnaces and regulating furnace draft; operated fuel oil pumps and burner; watched boiler water levels; shoveled bagasse; started and stopped fireroom machinery.

Dec. 8; Feb. 16; Mar. 9, 16; Apr. 6, 20, 27; May 11, 18; June 1, 8, 22; July 13, 20; Aug. 3, 10: He performed duties described immediately above and, during week-end shutdown,

cleaned and made minor repairs to fireroom equipment.

Regular hourly rate of pay, week commencing:

Nov. 18-July 20, $.83; July 27, $.85; Aug. 3-Sept. 7, $.91.

Amount unpaid and due: $87.68. [2131]

15. Seraphine Robello. This defendant operated the power plant. Though located in the mill, this plant supplied power for operations throughout the plantation. Machines over which he had supervision included a 2500 kilowatt bleeder turbine and two 500 kilowatt machines driven by a Corliss compound engine, all located in the power plant, and air compressors located in the boiling house.

The power plant supplied power to the mill, field irrigation pumps, all the repair and service shops and related buildings, domestic water pumps, plantation houses, village services, and even several non-plantation users living in the plantation community who, because of their location, could more conveniently be served from plaintiff's lines than from the Hawaiian Electric Company. The air compressors over which he had charge furnished compressed air which was used throughout the plantation, and particularly in the repair and service shops: machine shop, welding shop, blacksmith shop, tinsmith shop, caneloading machine repair shop, tractor repair shop, garage, electric shop, carpenter shop and roundhouse.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours during grinding season for all of which he received overtime pay:

Nov. 18, 24; Dec. 23, 30; Mar. 3, 10, 17, 30; May 26; June 29; July 13, 28; Aug. 24, 31.

Weeks in which he worked overtime hours for all of which he properly received overtime pay, such weeks falling during the off-season when no processing occurred, and when his work consisted of overhauling, reconditioning, and repairing power plant equipment, and starting, stopping, and servicing and repairing air compressors: Jan. 6, 13, 20, 27; Feb. 3.

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48 (during each of which weeks he worked 8 overtime hours), inasmuch as his work consisted of starting, [2132] operating and stopping generating units, operating switchboard equipment, keeping a log of power house operations, making repairs and adjustments to all power plant equipment, supervising equipment which showed the interchange of power between the plantation and the Hawaiian Electric power systems, starting, stopping, servicing and repairing air compressors, and during week ends, cleaning and repairing power plant equipment:

Feb. 16, 23; Apr. 6, 20, 27; May 11, 19; June 1, 8, 22; July 20; Aug. 3, 10.

In each of the remaining weeks, he performed the

same duties as those listed above (8 overtime hours each week), except he did no cleaning and repairing of power plant equipment during week-end shutdown.

Dec. 1, 8, 15; Feb. 10; Mar. 24; Apr. 14; May 5; June 16; July 7; Aug. 18; Sept. 8.

Regular hourly rate of pay, week commencing:

Nov. 18-July 20, $1.50; July 28, $1.52; Aug. 3-Sept. 8, $1.55.

Amount unpaid and due: $144.80.

Repair Shops

16. These are the shops which comprise the Service Department. Treated below are the defendants who were attached to one or another of these shops.

17. Damaso Claunan. This defendant was employed as a mechanic, attached to plaintiff's garage. His work consisted principally of repairing plaintiff's automobiles, trucks, and other plantation equipment. To a minor extent, never for more than 5½ hours in a particular week, he performed servicing and repairing of caneloading machines in the fields.

Weeks in which he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 23, 30; Jan. 13, 27; Feb. 3; Mar. 31; Apr. 7, 14; May 12, 26; June 2, 30; July 21; Aug. 18, 25; Sept. 1. [2133]

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt (Jan. 13, 27, overtime paid; plaintiff denies this was obligatory):

Dec. 2: 7½ hours repairing trucks in garage; 40½ hours repairing concrete products plant equipment.

Dec. 9 (48 hours); Dec. 16 (48½ hours); Jan. 6 (48 hours); Jan. 20 (48¾ hours); Feb. 10 (48 hours); Mar. 10 (48 hours); Mar. 24 (48 hours); May 5 (48½ hours); June 9 (48 hours); June 16 (48 hours): All hours in each week repairing trucks or trucks and automobiles.

Jan. 13: Repair—39¾ hours trucks; 6¾ privately owned truck of an employee of plaintiff at plaintiff's retail store; 1½ hours mill equipment.

Jan. 27: Repair—45½ hours trucks. Other work—3 hours removing rock and cement from mud press pit at mill.

Feb. 17: Repair—49½ hours trucks; ½ hour privately owned automobile of an employee of plaintiff. Other work—1¾ hours servicing cane-loading machines in cane fields.

Feb. 24: Repair—42¾ hours trucks; 6¼ hours equipment used in cutting trees for firewood.

Mar. 3: Repair—45 hours trucks; 1 hour air compressors; 2 hours equipment used in cutting trees for firewood.

Mar. 17: 47 hours repairing trucks, 2 hours repairing mill equipment.

Apr. 21: Repair—55¼ hours trucks. Other work—4¼ hours servicing and repairing cane-loading machines in cane fields.

Apr. 28: Repair—1 hour equipment used in cane field irrigation operations; 2 hours mill equipment; 1¼ hour privately owned truck of employee of plaintiff; 51¼ hours trucks.

May 19: Repair—44 hours trucks; 1¼ hour air compressor; 2¾ hours equipment used in maintaining domestic sewer and domestic water supply system in plantation villages.

June 23: Repair—4 hours repairing cane-loading machines in cane fields; 1¼ hours garage equipment; 49 hours trucks and automobiles.

July 7: Repair—2 hours caneloading machines in cane fields; 1 hour trailer used in transporting caneloading machines to and from cane fields and plantation buildings and yard area; 47½ hours trucks and automobiles. [2134]

July 14 (48 hours); Aug. 11 (57 hours): Sept. 8 (47¼ hours): All hours in each week repairing trucks and automobiles and Trailers #347 and #348.

July 28: Repair—5½ hours repairing cane-loading machines in cane fields; 5¼ hours lawn mower used in maintaining parks and playgrounds; 37¼ hours trucks and automobiles; 2½ hours air compressor.

Aug. 4: Repair—4½ hours caneloading ma-

chines in cane fields; 7 hours Trailers #347 and #348; 41½ hours trucks and automobiles; ¼ hour air compressor.

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $1.27; July 28, $1.30; Aug. 4, $1.37; Aug. 11, $1.475; Aug. 18-Sept. 8, $1.35.

Amount unpaid and due: $125.96.

18. Fumio Sunahara. This defendant was attached to the welding shop. All of his time was spent in welding repairs and construction.

Weeks in which he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 23, 30; Jan. 6, 13, 20, 27; Feb. 3; Mar. 31; May 26; June 30; Aug. 25; Sept. 1.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt (Jan. 6, 13, 20, 27; Feb. 3—overtime paid; plaintiff denies this was obligatory):

Dec. 2: Repair—4 hours stable equipment; 6½ hours cane cars; 9½ hours Locomotive #6; 18½ hours mill equipment. Other work—6 hours constructing equipment for garage; 5½ hours installing equipment at bathhouse.

Dec. 9: Repair—37 hours mill equipment; 8 hours Locomotive #6; 4 hours rolling stock.

Dec. 16: Repair—4 hours machine used to plant cane seed; 41 hours mill equipment; 2 hours rolling stock; 2 hours service station equipment. Other work—3 hours installing equipment at bathhouse.

Jan. 6 (53½ hours); Jan. 13 (59 hours); Jan. 20 (63 hours); Jan. 27 (60½ hours); Feb. 3 (78½ hours); Feb. 10 (48 hours); Feb. 17 (59 hours); Feb. 24 (48 hours); Mar. 10 (48 hours); Mar. 17 (59½ hours); Mar. 24 (49 hours); Apr. 21 (51½ hours); Sept. 8 (48½ hours): All hours spent repairing mill equipment.

Mar. 3: Repair—46 hours mill equipment; 1½ hours fireroom equipment at fireroom; ½ hour hand truck used at plaintiff's retail [2135] store.

Apr. 7: Repair—8 hours cane cars; 23½ hours mill equipment; 10½ hours warehouse building, at warehouse.

Apr. 14: Repair—22 hours machine used to plant cane seed; 36 hours mill equipment; 2 hours machine shop equipment.

Apr. 28: Repair—16 hours machine used to plant cane seed; 32½ hours mill equipment. Other work—2 hours constructing irrigation flume forms.

May 5: Repair—30½ hours mill equipment; 1 hour laboratory equipment; 4½ hours Pump Station #3 equipment. Other work—20½ hours constructing irrigation flume forms.

May 12: Repair—2 hours warehouse building, at warehouse. Other work—46 hours constructing irrigation flume forms.

May 19: Repair—5 hours equipment of herbicide station; 2 hours Locomotive #7; 18 hours mill equipment; 2 hours fireroom equipment; 3 hours laboratory equipment. Other work—18 hours constructing irrigation flume forms.

June 2: Repair—20 hours mill equipment; 4 hours fireroom equipment; 7 hours service station. Other work—17 hours making improvements for dwellings of plaintiff's employees.

June 9: Repair—29 hours mill equipment; 19 hours stoneboat sled.

June 16: Repair—31½ hours mill equipment; 6 hours Tractor #126; 8 hours stoneboat sled. Other work—4 hours constructing equipment for service station.

June 23: Repair—36 hours mill equipment; 18 hours Tractor #126; 2 hours service station; 2 hours electric transmission lines.

July 7: Repair—3 hours plow; 25½ hours mill equipment; 5 hours fireroom equipment at fireroom; 14½ hours service station.

July 14: Repair—46 hours mill equipment; 2 hours dwellings.

July 21: Repair—47 hours mill equipment; 3 hours Locomotive #5.

July 28: Repair—42 hours mill equipment; 1 hour fireroom equipment at fireroom; 1 hour equipment of power plant at power plant; 1

hour Locomotive #5; 2 hours rolling stock; 6 hours fire protection equipment; 1 hour electrical supply system maintained at plantation village for servicing dwellings; 1 hour hospital equipment; 1 hour equipment used for maintenance of plantation roads. [2136]

Aug. 4: Repair—3 hours Pump Station #1 equipment; 3 hours equipment of plantation irrigation system; 41½ hours cane cars; 31 hours mill equipment; 9 hours fireroom equipment, at fireroom and at welding shop; 1 hour Locomotive #4; 1 hour machine shop equipment; 1 hour fire protection equipment.

Aug. 11: Repair—1 hour equipment of plantation irrigation system; 1 hour portable track; 3 hours cane cars; 41 hours mill equipment; 4 hours fireroom equipment, in fireroom and in welding shop; 1 hour truck #417; 1 hour Locomotive #2; 1 hour Locomotive #4; 1 hour machine shop equipment; 1 hour fire protection equipment.

Aug. 18: Repair—53½ hours mill equipment; 1 hour Locomotive #7. Other work—1½ hours making improvement for dwelling of one of plaintiff's employees.

Regular hourly rate of pay, week commencing:

Nov. 18-July 14, $1.27; July 21, $1.29; July 28, $1.43; Aug. 4-11, $1.475; Aug. 18-Sept. 8, $1.35.

Amount unpaid and due $143.34.

19. Toshio Tanaka. This defendant was employed as a machinist. His work consisted of machining parts. All of his work was performed at the machine shop.

Weeks in which he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

> Nov. 18, 25; Dec. 9, 16, 23, 30; Jan. 6, 13, 20, 27; Feb. 3, 23; Mar. 31; Apr. 14, 21; May 26; June 30; July 28; Aug. 4, 25; Sept. 1.

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt (Jan. 6, 13, 20, 27; Feb. 3—overtime paid; plaintiff denies this was obligatory):

> Dec. 2: 23 hours mill equipment; 4 hours Caneloading Machine #302; 9 hours Truck #400, 406; 7 hours Tractor #131; 1 hour Tractor Auxiliary Implement #234; 4 hours Pump #7 equipment.
>
> Jan. 6: 2 hours irrigation equipment; 54 hours mill equipment.
>
> Jan. 13: 56 hours mill equipment.
>
> Jan. 20: 11 hours Pump #4 equipment; 38 hours mill equipment; 7 hours Caneloading Machine #305; 2 hours hospital equipment. [2137]
>
> Jan. 27: 2 hours all locomotives; 47 hours mill equipment; 1 hour Caneloading Machine #305; 4 hours mill pump equipment; 2 hours fireroom equipment; 2 hours hospital equipment.

Feb. 3: 3 hours Tractor #141; 2 hours Caneloading Machine #304; 6 hours all locomotives; 36 hours mill equipment; 3 hours Truck #441; 8 hours Pump #3 equipment.

Feb. 10: 8 hours all locomotives; 4 hours all caneloading machines; 8 hours mill equipment; 1 hour Tractor #139; 8 hours Pump #3 equipment; 2 hours hospital equipment; 5 hours electric shop equipment; 2 hours welding shop equipment; 4 hours roundhouse equipment; 6 hours concrete mixer.

Feb. 17: 4 hours irrigation equipment; 2 hours portable track; 14 hours mill equipment; 9 hours power plant equipment; 9 hours Pump #3 equipment; 6 hours welding shop equipment.

Mar. 3: 34 hours mill equipment; 1 hour power plant equipment; 6 hours Pump #3 equipment; 7 hours welding shop equipment.

Mar. 10: 7 hours mill equipment; 9 hours power plant equipment; 24 hours Pump #3 equipment and Pump #4 equipment; 5 hours welding shop equipment; 3 hours garage equipment.

Mar. 17: 14 hours mill equipment; 6 hours Caneloading Machine #306; 11 hours Trucks #414, 435, 436, 503; 5 hours power plant equipment; 1 hour tractor repair shop equipment; 8 hours Pumps #3 and #4 equipment; 3 hours hospital equipment.

Mar. 24: 32 hours mill equipment; 4 hours

Locomotives #3 and 6; 12 hours Pump #3 equipment.

Apr. 7: 3 hours Tractor #102; 10 hours Pump #4 equipment; 2 hours Truck #430; 2 hours all locomotives; 11 hours mill equipment; 14 hours Caneloading Machines #306, 309; 6 hours for improvement at dwelling of one of plaintiff's employees in plantation village.

Apr. 28: 5 hours Tractor Auxiliary Implement #201A; 29 hours Locomotives #3, 6, 8; 6 hours mill equipment; 3 hours Caneloading Machine #309 and northwest caneloader; 1 hour Truck #413; 4 hours Pump #2 equipment.

May 5: 20 hours all locomotives; 14 hours mill equipment; 3 hours Caneloading Machine #306; 5 hours Trucks #408, 413; 2 hours tractor repair shop equipment; 4 hours fire protection equipment.

May 12: 9 hours herbicide hand spraying equipment; 1 hour cane cars; 4 hours all locomotives; 21 hours mill equipment; 5 hours Caneloading Machine #306; 7 hours welding shop equipment; 1 hour laboratory [2138] equipment.

May 19: 18 hours herbicide hand spraying equipment; 1 hour Tractor #104; 3 hours Tractor Auxiliary Implement #203; 13 hours mill equipment; 3 hours all locomotives; 4 hours all caneloading machines; 6 hours Trucks #401, 453.

June 2: 8 hours herbicide hand-spraying equipment; 10 hours Tractor Auxiliary Implements #201A, 241; 30 hours mill equipment.

June 9: 7 hours Tractor Auxiliary Implement #201A; 4 hours automobile used in cane field supervision; 37 hours mill equipment; 6 Trucks #401, 506.

June 16: 36 hours mill equipment; 12 hours power plant equipment.

June 23: 2 hours Tractor #133; 31 hours mill equipment; 13 hours all caneloading machines; 3 hours Truck #473.

July 7: 5 hours Tractor auxiliary implements; 5 hours Trucks #340, 341; 5 hours all locomotives; 33 hours mill equipment.

July 14: 2 hours tractor auxiliary implements; 30 hours mill equipment; 3 hours fireroom equipment; 2 hours garage equipment; 9 hours all caneloading machines; 4 hours Trucks #435, 441.

July 21: 3 hours tractor auxiliary implements; 33 hours mill equipment; 5 hours all locomotives; 5 hours all caneloading machines; 7 hours equipment for parks and playgrounds.

Aug. 11: 16 hours tractor auxiliary implements; 3 hours Truck #400; 4 hours all locomotives; 7 hours all caneloading machines; 23 hours mill equipment; 1 hour fireroom equipment.

Aug. 18: 2 hours tractor auxiliary implements; 2 hours irrigation equipment; 7 hours cane cars; 5 hours all locomotives; 1 hour all

caneloading machines; 23½ hours mill equipment; 1 hour fireroom equipment; 2 hours Trucks #402, 409; 1 hour Pump #3 equipment; 1 hour Tractor #124; 1 hour improvements at dwellings; 2 hours electric transmission lines.

Sept. 8: 6 hours tractor auxiliary implements; 2 hours equipment used to survey plantation cane fields; 3 hours Truck #502; 2½ hours Tractor #116; 7 hours cane cars; 7 hours all locomotives; 13½ hours mill equipment; 11 hours garage equipment.

Regular hourly rate of pay, week commencing:

Nov. 18-July 28; $1.27; Aug. 4, 11, Sept. 1, $1.35; Aug. 18, $1.475; Aug. 25, $1.37; Sept. 8, $1.44.

Amount unpaid and due: $111.04.

20. Masaru Ezawa. This defendant was employed as a mechanic in the tractor repair shop. His work consisted of repairing tractors, auxiliary implements, grader, haul cane equipment, trucks, concrete mixer, air compressor, and other [2139] equipment. On a very few occasions, he performed repairs in the fields; with this exception, all his work was performed in the tractor repair shop, a separate structure located near the mill.

In a subsequent finding, there are set forth in detail the uses to which tractors, implements and machines were put. Generally, tractors were used principally in plowing and ratooning, and, in addition, to repair field roads, perform work relating to

plantation villages, bulldoze sand, perform haul cane work, lay and lift portable track, transport trucks, level playground areas, construct banks for disposal area for mud refuse, broom cane, clean reservoirs, in construction work, to dislodge rails, remove rocks and cement from mud press pit, perform leveling work in the mill yard, haul articles manufactured at the concrete products plant, and to perform a variety of other tasks.

Tractor auxiliary implements were used in connection with plowing, bulldozing cane into piles, preparing fields for planting, digging ditches, making fire-brakes, opening and leveling portable track lines in fields, laying and lifting portable track, planting, lifting and lowering other implements, lifting cane cars, weeding, cultivating, removing stones from fields, and picking up, cutting and loading cane.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 23, 30; Mar. 31; Apr. 21; May 26; June 30; July 14; Aug. 25; Sept. 1.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt:

Dec. 2: Repair—48 hours Tractors #117, 130, 131.

Dec. 9: Repair—38 hours Tractors #116, 124, 125, 126, 132, 136, 138; 6 hours Tractor

Auxiliary Implement #248; 4 hours concrete mixer. [2140]

Dec. 16: Repair—48 hours Tractors #118, 119, 136.

Jan. 6: Repair—47 hours Tractors #106, 107, 137; 1 hour grader.

Jan. 13: Repair—46 hours Tractors #107, 111; 2 hours Tractor Auxiliary Implement #231.

Jan. 20: Repair—47 hours Tractors #111, 126, 138; 1 hour Tractor Auxiliary Implement #248.

Jan. 27: Repair—48 hours Tractors #108, 127, 134, 138.

Feb. 3: Repair—48 hours Tractors #134, 142.

Feb. 10: Repair—28 hours Tractors #133, 135, 137, 142; 17 hours Tractor Auxiliary Implements #246, 248; 3 hours haul cane equipment.

Feb. 17: Repair—39 hours Tractors #115, 133, 141, 189; 9 hours Tractor Auxiliary Implements #234, 248.

Feb. 24: Repair—46 hours Tractors #103, 104, 105, 109, 117, 121, 125, 138, 141, 142; 2 hours haul cane equipment.

Mar. 3: Repair—5½ hours Tractors #131-142, inclusive, in cane fields; 27 hours Tractor #103; 13½ hours Tractor Auxiliary Implements #201A, 234A; 2 hours grader.

Mar. 10: Repair—46 hours Tractors #103,

104, 107, 108, 109, 110, 113, 118, 125, 127, 144, 146; 9 hours Tractor Auxiliary Implements #203, 244, 248.

Mar. 17: Repair—33½ hours Tractors #103, 104, 106, 107, 108, 113, 115, 117, 122, 146; 11 hours Tractor Auxiliary Implements #201A, 234, 244; 1 hour haul cane equipment; 4 hours grader.

Mar. 24: Repair—24 hours Tractors #103, 109, 113, 123, 126, 130; 26 hours Tractor Auxiliary Implements #201A, 203, 244.

Apr. 7: Repair—4 hours Tractors in cane fields; 27 hours Tractors #103, 106, 107, 113, 118, 125, 135, 141, 150; 17 hours Tractor Auxiliary Implements #234, 244, 248.

Apr. 14: Repair—33 hours Tractors #106, 107, 116, 118, 126, 127, 130; 20 hours Tractor Auxiliary Implements #201A, 241, 244, 248.

Apr. 28: Repair—22 hours Tractors #109, 110, 113, 125, 130, 140, 146; 6 hours Tractor Auxiliary Implements #201A, 241; 2 hours grader; 18 hours Truck #518.

May 5: Repair—4 hours Tractors #131-142, inclusive, in cane fields; 22 hours Tractors #104, 112, 121, 126, 130, 136; 20½ hours Tractor Auxiliary Implements #201A, 232, 234A, 241, 244; 3 hours concrete mixer.

May 12: Repair—Tractors #104, 106, 110, 113 (52 hours).

May 19: Repair—41½ hours Tractors #104, 105, 113, 136; 8 hours Tractor Auxiliary Implements #201A, 232, 241. [2141]

June 2: Repair—44 hours Groups II and IV tractors; 4 hours all tractor auxiliary implements.

June 9: Repair—25 hours Groups III and IV tractors; 23 hours all tractor auxiliary implements.

June 16 (48 hours): July 28 (55 hours): Aug. 4 (51 hours): Sept. 8 (51¼ hours): All hours repairing Groups I, II, III and IV Tractors and all tractor auxiliary implements.

June 23: Repair—19 hours Groups I, II and IV tractors; 29 hours all tractor auxiliary implements.

July 7 (59½ hours): July 21 (60 hours): All hours repairing Groups II, III and IV tractors, and all tractor auxiliary implements.

Aug. 11: Repair—44½ hours Groups I, II and IV tractors; 7 hours all tractor auxiliary implements; 2 hours air compressor.

Aug. 18: Repair—32½ hours Groups I, II and III tractors; 21½ hours all tractor auxiliary implements.

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $1.27; July 28, $1.30; Aug. 4-Sept. 8, $1.35.

Amount unpaid and due: $163.96.

21. Domingo Guigui. This defendant was employed as a truck driver to perform a great variety of hauling duties, including the hauling of labor

and various materials and equipment. An additional recurrent duty was that of standing by at the garage as an operator of the fire truck. Labor hauled by him was picked up in plantation villages and taken to and from places of work on the plantation. Such labor consisted of employees engaged in field operations, in irrigation, in each of the mill operations, in each of the service shops, and also in the laboratory operations.

Weeks in which he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

> Nov. 18, 25; Dec. 22, 29; Jan. 13; Feb. 2; Mar. 3, 30; May 25; June 22, 30; Aug. 24; Sept. 1.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt (Jan. 13, Feb. 2, overtime paid; plaintiff denies this was obligatory): [2142]

> Dec. 2, 16: 48 hours in each week, all hours hauling labor and hauling for cane cleaning plant.
>
> Dec. 8: 3 hours hauling labor; 46½ hours hauling for cane cleaning plant; other work—7½ hours standing by at garage as fire truck operator.
>
> Jan. 5: Hauling—14½ hours hauling labor; 1½ hours for stable; 21½ hours for cane field operations; 3½ hours for irrigation system; 1 hour for warehousing of fertilizer used in

cane field operations; 1 hour for plantation villages; 2½ hours for plantation retail store; 1½ hours for clubhouse; 2½ hours for bathhouse; 1 hour for cane cleaning plant and boiling house; other work—5½ hours piling firewood; 8 hours standing by at garage as fire truck operator; ½ hour cleaning room at mill yard used to store tools for cane field operations.

Jan. 13: Hauling—4½ hours hauling labor; 4 hours for stable; 15½ hours for cane field operations; 9 hours for plantation villages; 4 hours for firewood operations; 7 hours for cane cleaning plant and boiling house; other work—½ hour piling firewood.

Jan. 19: Hauling—11 hours hauling labor; 2½ hours hauling asphalt for use in repair of village roads; 1 hour for stable; 20½ hours for cane field operations; 1½ hours for fireroom; 12 hours for plantation villages; 1½ hours for playground; other work—8 hours standing by at garage as fire truck operator; 3 hours repairing plantation village roads.

Jan. 27: Hauling—2½ hours hauling labor; 7½ hours hauling parts for tractors; 21½ hours for cane field operations; 13½ hours for irrigation system; 1 hour for firewood operations; 1 hour for plantation villages; other work—2½ hours piling firewood.

Feb. 2: Hauling—12½ hours hauling labor; 7 hours hauling crushing plant parts; 5½ hours for cane field operations; 4 hours for irrigation

system; 2½ hours for macadamia nut grove; 2 hours for cane cleaning plant and boiling house; 5 hours for firewood operations; 10 hours for plantation villages; 5½ hours for Pumps #3 and #4; other work—8 hours standing by at garage as fire truck operator.

Feb. 10: Hauling—1½ hours for cane field operations; 3 hours for irrigation system; 47½ hours for cane cleaning plant; ½ hour for fireroom.

Feb: 16: 48½ hours hauling for cane cleaning plant; 1 hour for fireroom; other work—6½ hours standing by at garage as fire truck operator.

Feb. 24 (56 hours); Mar. 17 (48 hours); Apr. 7 (48 hours); Apr. 13 (56 hours); Apr. 28 (48 hours); May 4 (56 hours); May 19 (48 hours); June 9 (48 hours); June 15 (56 hours); July 6 (56 hours); July 21 (48 hours); July 27 (56 hours); Aug 11 (48 hours): All hours in each week hauling labor and hauling for cane cleaning plant and fireroom. [2143]

Mar. 9; Apr. 20; May 11; June 1; July 13; Aug. 3: All hours, 56 in each week, standing by at garage as fire truck operator, hauling labor, and hauling for cane cleaning plant, boiling house, and fireroom.

Mar. 23: Hauling—2½ hours hauling labor; 1 hour towing truck engaged in hauling fertilizer for use in cane fields from fields to garage for repairs; 49 hours for cane cleaning plant; 3½ hours for fireroom.

Aug. 17: Hauling—1 hour hauling labor; 49½ hours for cane cleaning plant; 3½ hours for fireroom; 2 hours for field roads.

Sept. 7: Hauling—3 hours hauling labor; ½ hour towing truck engaged in hauling fertilizer for use in cane fields from fields to garage for repairs; 48 hours for cane cleaning plant; 3½ hours for fireroom; 1 hour for field roads.

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $1.04; July 27, $1.05; Aug. 3-Sept. 7, $1.09.

Amount unpaid and due: $123.82.

22. Alfred Reyher. This defendant was employed as a mechanic, attached to the caneloading machine repair shop. His work was mainly to repair caneloading machines: Caterpillar cranes weighing approximately 23 tons, and equipped with a 40-foot boom and a finger-like grab. This work was performed, as occasion dictated, sometimes in the shop and sometimes in the cane fields. He was also called on occasionally to haul labor, to repair field drainage pipe, and to repair caneloading buckets.

In a subsequent finding, the uses to which caneloading machines were put, are set forth in detail. Principally they were used to cut and load cane at the fields, but also to reload cane cars,* to un-

*See Finding relating to "Caneloading Machines," infra.

load cane cleaning plant equipment from freight cars to install equipment in the crushing plant, to construct banks for disposal area on the plantation for mud refuse from the mill, to construct drainage systems for draining cane fields, [2144] to load railroad rails for removal to storage, to construct sewage disposal systems, to load lumber, to load mill trash, and to perform a variety of other tasks.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 23, 30; Mar. 31; May 26; June 30; Aug. 25; Sept. 1.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt:

Dec. 2: Repair of caneloading machines—20½ hours #303, 305, 306, in cane fields; 27½ hours #302, in caneloading machine repair shop (hereinafter designated in this finding as "shop").

Dec. 9: Repair of caneloading machines—15 hours #303, 304, in cane fields; 33½ hours #302, 307, in shop.

Dec. 16: Repair of caneloading machines—15 hours #303, 304, 306, in cane fields; 33 hours #307, in shop.

Jan. 6: Repair of caneloading machines—48 hours #301, 303, 304, in shop.

Jan. 13: Repair of caneloading machines—48 hours #304, 305, 306, in shop.

Jan. 20: Repair of caneloading machines—48 hours #301, 304, 305, 306, in shop.

Jan. 27: Repair of caneloading machines—48 hours #304, 305, 306, 308, in shop.

Feb. 3: Repair of caneloading machines—43 hours #301, 302, 304, 305, 307, 308, in shop; other work—5 hours cleaning shop.

Feb. 10: Repair of caneloading machines—34 hours #302, 303, 304, 305, in cane fields; 16 hours #306, in shop; other work—1 hour hauling labor.

Feb. 17: Repair of caneloading machines—36½ hours #301, 302, 303, 304, 307, in cane fields; 12½ hours #306, in shop; other work—4 hours repair of field drainage pipeline in cane fields.

Feb. 24: Repair of caneloading machines—18 hours #302, 307, in cane fields; 30 hours #306, in shop; other work—2 hours hauling labor. [2145]

Mar. 3: Repair of caneloading machines—31½ hours #301, 302, 303, 305, 307, in cane fields; 21½ hours #306, in shop; other work—1 hour hauling labor.

Mar. 10: Repair of caneloading machines—15½ hours #301, 302, 303, 304, 305, 307, in cane fields; 31½ hours #306, in shop; other work—1 hour repair of Caneloading Bucket #331, in shop.

Mar. 17: Repair of caneloading machines—13½ hours #301, 303, 305, in cane fields; 34½ hours #306, in shop.

Mar. 24: Repair of caneloading machines—32 hours #301, 302, 303, 304, 305, 307, 309, in cane fields; 8 hours #306, in shop; other work—8 hours making new type cane grab in shop; ½ hour hauling labor.

Apr. 7: Repair of caneloading machines—45½ hours #301, 302, 303, 304, 307, 308, 309, in cane fields; 2½ hours #306, in shop; other work—½ hour hauling labor.

Apr. 14: Repair of caneloading machines—41½ hours #301, 302, 303, 305, 307, 309, in cane fields; 4½ hours #306, in shop; other work—4 hours repair of Caneloading Bucket #331, in shop; 2 hours hauling labor.

Apr. 21: Repair of caneloading machines—22½ hours #301, 302, 303, 304, 305, 307, in cane fields; 23½ hours #302, 306, in shop; other work—1 hour repair of Caneloading Bucket #331, in shop; 5 hours removing acetylene generator to be junked from garage.

Apr. 28: Repair of caneloading machines—38 hours #301, 302, 303, 304, 305, 307, 309, in cane fields; 8 hours #306, in shop; 9 hours northwest caneloader in shop.

May 5: Repair of caneloading machines—21 hours #301, 304, 305, 307, 309, in cane fields; 37 hours #306, in shop.

May 12: Repair of caneloading machines—38½ hours #301, 302, 303, 304, 305, 307, 308, in cane fields; 18 hours #306, in shop; other work—4 hours repair of Caneloading Bucket #331, in shop.

May 19: Repair of caneloading machines—14½ hours #305, 307, in cane fields; 34 hours #306, in shop.

June 2 (50 hours); June 9 (55½ hours); June 16 (57 hours); June 23 (53½ hours); July 7 (53 hours); July 21 (58 hours); July 28 (51 hours); Aug. 4 (51 hours); Aug. 11 (53½ hours); Aug. 18 (54½ hours); Sept. 8 (59½ hours): All hours in each week repairing all caneloading machines both in shop and in the fields.

July 14: Repair of caneloading machines—45 hours all caneloading machines, both in shop and in the fields; other work—4 hours cleaning shop.

Regular hourly rate of pay, week [2146] commencing:

Nov. 18-July 21, $1.27; July 28, $1.30; Aug. 4-Sept. 8, $1.35.

Amount unpaid and due: $174.12.

23. Hirosaku Takata. This defendant was employed as a blacksmith, and spent all of his time performing repairs appropriate to his occupation. For the most part, his work was performed at the blacksmith shop, a separate structure located near the mill.

Weeks in which he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 23, 30; Jan. 6, 13, 20, 27; Feb. 3; Mar. 31; Apr. 14, 21; May 26; June 30; Aug. 25; Sept. 1.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt (Jan. 6, 13, 20, 27; Feb. 3—overtime paid; plaintiff denies this was obligatory):

Dec. 2: Repair—2 hours equipment used in cane field operations; 2 hours Tractor Auxiliary Implement #234; 4 hours cane cars; 10 hours Caneloading Machine #301; 17 hours mill equipment; 3½ hours Trucks #340, 404; 1½ hours grader; 1½ electric shop equipment; other work—6½ hours repairing portable track rail cars.

Dec. 9: Repair—1½ hours Tractor Auxiliary Implement #284; 4 hours Caneloading Machine #307; 8½ hours cane cars; 15 hours mill equipment; 12 hours Trucks #341, 401; other work—7 hours reconstructing railroad rock cars into portable track railcars.

Dec. 16: Repair—6 hours cane cars; 3 hours Tractor #122; 8 hours mill equipment, 2 hours Locomotive #6; 26 hours parts for all caneloading machines; other work—3 hours reconstructing railroad rock cars into portable track rail cars.

Jan. 6: Repair—6 hours Caneloading Machine #303; 18½ hours cane cars; 22 hours mill equipment; 1½ hours Truck #408.

Jan. 13: Repair—10 hours portable track; 10 hours cane cars; 20 hours mill equipment; 2 hours Locomotive #4; other work—6 hours shoeing horses and mules at stable.

Jan. 20: Repair—14 hours portable track; 34 hours mill equipment.

Jan. 27: Repair—10½ hours Caneloading Machine #304; 37½ hours mill [2147] equipment.

Feb. 3: Repair—17 hours portable track; 22 hours mill equipment; 2 hours all caneloading machines; other work—7 hours shoeing horses and mules at stable.

Feb. 10: Repair—5 hours Tractor Auxiliary Implement #241; 13 hours portable track; 19 hours cane cars; 11 hours plantation village sewerage system equipment.

Feb. 17: Repair—16 hours portable track; 17½ hours cane cars; 10½ hours mill equipment; 4 hours fireroom equipment.

Feb. 24: Repair—2 hours Tractor Auxiliary Implement #234; 19½ hours cane cars; 18 hours mill equipment; 2½ hours Truck #503; other work—6 hours shoeing horses and mules at stable.

Mar. 3, 17: All hours, 48 in each week, repairing cane cars, mill equipment, and Caneloading Machine #305.

Mar. 10: Repair—2 hours Tractor #103; 7 hours Tractor Auxiliary Implements #201A, 259C; 18½ hours cane cars; 13½ hours mill

equipment; 7 hours all caneloading machines.

Mar. 24: July 14, 21: All hours, 48 in each week, repairing tractor auxiliary implements, cane cars, mill equipment, and fireroom equipment.

Apr. 7: Repair—3½ hours cane grab; 13½ hours portable track; 20½ hours cane cars; 6½ hours mill equipment; other work—4 hours shoeing horses and mules at stable.

Apr. 28: Repair—25 hours cane cars; 18 hours mill equipment; 5 hours hospital equipment.

May 5: Repair—29 hours cane cars; 16 hours mill equipment; 1 hour fireroom equipment; 2 hours Tractor #126.

May 12: Repair—11 hours Tractor Auxiliary Implements #241, 259C; 27 hours cane cars; 13 hours mill equipment; 2 hours Caneloading Machine #306.

May 19: Repair—6 hours Tractor Auxiliary Implement #259C; 15 hours cane cars; 17 hours mill equipment; 1 hour Caneloading Machine #306; 5 hours fireroom equipment.

June 2: Repair—11 hours tractor auxiliary implements; 9 hours cane cars; 24½ hours mill equipment; 2 hours fireroom equipment; other work—5½ hours shoeing horses and mules at plantation and stable.

June 9: Repair—22 hours cane cars; 21 hours mill equipment; 3 hours parts for all locomotives; 2 hours all caneloading machines.

June 16: Repair—2 hours equipment used in cane field operations; 3 hours tractor auxiliary implements; 4 hours concrete products plant equipment; 12 hours cane cars; 26 hours mill equipment; 1 hour service station equipment. [2148]

June 23: Repair—2 hours tractor auxiliary implements; 2 hours concrete products plant equipment; 2 hours portable track; 19 hours cane cars; 13 hours mill equipment; 1 hour fireroom equipment; 1 hour all locomotives; 6 hours all caneloading machines; 2 hours blacksmith shop equipment.

July 7: Repair—3 hours portable track; 26 hours cane cars; 19 hours mill equipment.

July 28: Repair—16 hours cane cars; 24 hours mill equipment; 1 hour fireroom equipment; 3 hours power plant equipment; 4 hours fire protection equipment.

Aug. 4: Repair—30 hours cane cars; 18 hours mill equipment.

Aug. 11: Repair—17 hours cane cars; 22 hours mill equipment; 3 hours fireroom equipment; 2 hours Locomotive #4; 2 hours machine shop equipment; 2 hours trucks.

Aug. 18: Repair—16 hours portable track; 8 hours cane cars; 13 hours mill equipment; 1 hour Pump #3 equipment; 2 hours trucks; other work—8 hours shoeing horses and mules at stable.

Sept. 8: Repair—1 hour Tractor Auxiliary

Implement #259C; 3 hours portable track; 20 hours cane cars; 14 hours mill equipment; 7 hours fireroom equipment; 3 hours plantation village sewerage system equipment.

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $1.27; July 28, $1.30; Aug. 4-Sept. 8, $1.35.

Amount unpaid and due: $136.02.

24. Antone Vierra. This defendant was employed as a truck driver. His principal task was to haul labor from assembly points in villages, to and from places of work on the plantation, and to haul crushed rock. Employees hauled by him were engaged in a variety of operations, in the field, irrigation, each of the mill operations, and each of the service shops. The crushed rock hauled by him was delivered to the concrete products plant.

He also hauled other materials and equipment, as shown below.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 16, 23, 30; Mar. 31; May 26; June 30; Aug. 25; Sept. 1. [2149]

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt:

Dec. 2: Hauling—14 hours hauling labor;

2½ hours for cane field operations; 5½ hours for stable; 1½ hours for irrigation system; 9½ hours for plantation railroad; 5½ hours for fireroom; 4½ hours for concrete products plant; 4 hours for plantation villages; 5½ hours for firewood operations; 1½ hours hauling supplies from plantation warehouse to retail store of independent person located in plantation village; other work—4½ hours maintenance work in mill yard; 1½ hours cutting firewood.

Dec. 9: Hauling—15 hours hauling labor; 9½ hours for cane field operations; 3½ hours for stable; 19½ hours for plantation railroad; 2½ hours for fireroom; 1 hour for warehouses; 5½ hours for plantation villages; 3½ hours hauling stones from cane cleaning plant, off plantation, for building stone wall.

Jan. 6: Hauling—15½ hours hauling labor; 1½ hours for cane field operations; 2½ hours for stable; 2½ hours for irrigation system; 15½ hours for plantation villages; 22½ hours hauling crushed rock to plantation villages for repair of village roads.

Jan. 13: Hauling—15 hours hauling labor; 30 hours for cane field operations; 15 hours for irrigation system.

Jan. 20: Hauling—13½ hours hauling labor; 6 hours for cane field operations 2 hours for stable; 36 hours for irrigation system; 1 hour for gymnasium.

Jan. 27: Hauling—15 hours hauling labor;

5½ hours for cane field operations; 2 hours for stable; 17 hours for irrigation system; 15 hours for plantation villages; 5½ hours for gymnasium.

Feb. 3: Hauling—14½ hours hauling labor; 3½ hours for cane field operations; 5½ hours for stable; 12 hours for irrigation system; 2½ hours for roundhouse; 19 hours for plantation villages; 1½ hours for firewood operations.

Feb 10: Hauling—17 hours hauling labor; 11½ hours for cane field operations; 3½ hours for stable; 4 hours hauling macadamia nut seedlings from Honolulu; 13½ hours for irrigation system; 5½ hours for concrete products plant; 1 hour for warehouses; 4 hours for plantation villages.

Feb. 17: Hauling—15 hours hauling labor; 4½ hours for cane field operations; 3½ hours for stable; 24½ hours for irrigation system; 5 hours hauling herbicides from off plantation to plantation warehouse; 7½ hours for plantation villages.

Feb. 24: Hauling—15½ hours hauling labor; 3 hours for cane field operations; 2½ hours for macadamia nut grove; 3½ hours for stable; 4 hours for irrigation system; 7½ hours hauling crushed rock from off plantation to concrete products plant; 2 hours for warehouses; [2150] 2½ hours for plantation villages; 6 hours hauling crushed rock from off plantation to plantation village for repair of sewer system; 6 hours for firewood operations; other

work—1½ hours piling firewood at splitting station.

Mar. 3: Hauling—14½ hours hauling labor; 21 hours for cane field operations; 2 hours for irrigation system; 5½ hours for field roads; 15 hours hauling crushed rock from off plantation to concrete products plant; 2 hours for plantation villages.

Mar. 10: Hauling—15½ hours hauling labor; 13½ hours for cane field operations; 2 hours for stable; 6½ hours for irrigation system; 4 hours hauling cane stalks from fields to mill; 7 hours hauling crushed rock from off plantation to concrete products plant; 4 hours for plantation villages; 3 hours for firewood operations; 4½ hours hauling furniture for employee of plaintiff to said employee's dwelling in plantation village.

Mar. 17: Hauling—14 hours hauling labor; 2 hours for cane field operations; 2 hours for tinsmith shop repairing irrigation scoops; 26½ hours for irrigation system; 7 hours for storage of plantation railroad ties; 7 hours hauling crushed rock from off plantation to concrete products plant; 1½ hours for plantation villages.

Mar. 24: Hauling—11½ hours hauling labor; 2 hours for cane field operations, 42½ hours for irrigation system; 1½ hours for clubhouse.

Apr. 7: Hauling—16 hours hauling labor; 11 hours for cane field operations; 6 hours for

stable; 3½ hours hauling crushed rock from off plantation to cane fields for repair of field roads; 14 hours hauling crushed rock from off plantation to concrete products plant; 7 hours hauling crushed rock from off plantation to plantation villages for repair of village roads and sidewalks; 3 hours for firewood operations.

Apr. 14: Hauling—13 hours hauling labor; 2 hours for cane field operations; 15½ hours for irrigation system; 6 hours hauling cane stalks from cane field to mill; 14½ hours hauling crushed rock from off plantation to concrete products plant; 1 hour for plantation villages; 4½ hours hauling crushed rock from off plantation to plantation villages for repair of village sidewalks; 2 hours for firewood operations.

Apr. 21: Hauling—16 hours hauling labor; 15 hours for cane field operations; 6 hours for irrigations system; 3½ hours for storage of plantation railroad equipment; 15 hours hauling crushed rock from off plantation to concrete products plant; 4½ hours for firewood operations.

Apr. 28: Hauling—14 hours hauling labor; 5½ hours for cane field operations; 1½ hours for irrigations system; 3½ hours for storage of plantation railroad ties; 5½ hours for concrete products plant; 7½ hours hauling crushed rock from off plantation to concrete products plant; 7½ hours for plantation villages; 13½ hours for firewood operations. [2151]

May 5: Hauling—13½ hours hauling labor; 20 hours for cane field operations; 6 hours for irrigation system; 2 hours for concrete products plant; 15 hours hauling crushed rock from off plantation to concrete products plant; 2 hours hauling crushed rock from off plantation to plantation villages for repair of village sidewalks.

May 12: Hauling—15 hours hauling labor; 24 hours for cane field operations; 1½ hours for stable; 9 hours for irrigation system; 3 hours for concrete products plant; 7½ hours hauling crushed rock from off plantation to concrete products plant.

May 19: Hauling—7 hours hauling labor; 19 hours for cane field operations; 1 hour for stable; 7 hours for irrigation system; 15 hours hauling crushed rock from off plantation to concrete products plant; 3 hours hauling crushed rock from off plantation to plantation villages for repair of village sidewalks.

June 2: Hauling—6 hours hauling labor; 15 hours for cane field operations; 3½ hours for tinsmith shop operation to repair irrigation scoops; 1 hour for warehouses; 15 hours hauling crushed rock from off plantation to concrete products plant; 3 hours for plantation villages; 7½ hours hauling crushed rock from off plantation to plantation village for repair of village road.

June 9: Hauling—6 hours hauling labor; 23½ hours for cane field operations; 4 hours

for irrigation system; 2½ hours for storage of plantation railroad ties; 15 hours hauling crushed rock from off plantation to concrete products plant.

June 16: Hauling—7 hours hauling labor; 15 hours for cane field operations; 1½ hours for stable; 8½ hours for irrigation system; 5 hours for concrete products plant; 15 hours hauling crushed rock from off plantation to concrete products plant.

June 23: Hauling—6 hours hauling labor; 22 hours for cane field operations; 1 hour for stable; 7 hours for irrigation system; 15 hours hauling crushed rock from off plantation to concrete products plant.

July 7: Hauling—6 hours hauling labor; 19½ hours for cane field operations; 5 hours for irrigation system; 8 hours hauling cane stalks from cane fields to mill; 5 hours for roundhouse; 7½ hours hauling crushed rock from off plantation to concrete products plant.

July 14: Hauling—5½ hours hauling labor; 10½ hours for cane field operations; 7½ hours for irrigation system; 3½ hours for roundhouse; 11½ hours for concrete products plant; 7½ hours hauling crushed rock from off plantation to concrete products plant; 5 hours for plantation villages.

July 21: Hauling—6 hours hauling labor; 4½ hours for cane field operations; 17½ hours for irrigation system; 1½ hours hauling cane stalks from cane fields to mill; 4½ hours for

tinsmith shop operation of repairing irrigation scoops; 15 hours hauling crushed rock from off plantation to concrete products plant; 2 hours for plantation villages. [2152]

July 28: Hauling—6 hours hauling labor; 10 hours for cane field operations; 6½ hours for irrigation system; 1 hour for tinsmith operation of repairing irrigation scoops; 5 hours for concrete products plant; 15 hours hauling crushed rock from off plantation to concrete products plant; 7½ hours for roundhouse.

Aug. 4: Hauling—7 hours hauling labor; 25 hours for cane field operations; 11½ hours for irrigation system; 7½ hours hauling crushed rock from off plantation to concrete products plant.

Aug. 11: Hauling—7 hours hauling labor; 10½ hours for cane field operations; 4 hours for irrigation system; 3½ hours for concrete products plant; 22 hours hauling crushed rock from off plantation to concrete products plant; 4 hours for roundhouse.

Aug. 18: Hauling—8 hours hauling labor, 23½ hours for cane field operations; 1½ hours for tinsmith shop operation of repairing irrigation scoops; 15 hours hauling crushed rock from off plantation to concrete products plant; 3 hours for plantation villages.

Sept. 8: Hauling—7 hours hauling labor; 12 hours for cane field operations; 3 hours hauling rails from off plantation to plantation

Jan. 20: Repair of plumbing facilities—47½ hours at dwellings; 1 hour at hospital.

Jan. 27. Repair of plumbing facilities—39 hours at [2155] dwellings; ½ hour at clubhouse; 1½ hours at plaintiff's retail store; 5 hours at hospital; other repair—2 hours water tank of locomotive; ½ hour fire hydrant; 2 hours water line of City and County of Honolulu.

Feb. 3: Repair of plumbing facilities—45 hours at dwellings; 1½ hours at playground; other repair—6 hours sewage system equipment and water supply system in plantation village.

Feb. 10: Repair of plumbing facilities—43 hours at dwellings; 2 hours at plaintiff's retail store; 2½ hours at a beach home near plantation, owner of said home being charged for such repair work; 8½ hours at hospital; other repair—4 hours sewage system equipment in plantation village.

Feb. 17: Repair of plumbing facilities—42½ hours at dwellings; ½ hour at clubhouse; 7 hours at main administration office; 2 hours at hospital.

Feb. 24: Repair of plumbing facilities—39 hours at dwellings; 2 hours at hospital; other repair—7 hours sewage system equipment in plantation village.

Mar. 3: Repair of plumbing facilities—47½ hours dwellings; 2½ hours at hospital.

Mar. 10: Repair of plumbing facilities—

47½ hours at dwellings; other repair—1 hour water supply system at plantation cemetery.

Mar. 17: Repair of plumbing facilities—40 hours at dwellings; 1 hour at playground; 2½ hours at gymnasium; ½ hour at a barber shop in plantation in building leased by plaintiff; 2 hours at carpenter shop; other repair—½ hour repairing plumbing shop equipment at plumbing shop; 2½ hours water line of City and County of Honolulu.

Mar. 24: Repair of plumbing facilities—38 hours at dwellings; 10½ hours at hospital.

Apr. 7: Repair of plumbing facilities—46 hours at dwellings; ½ hour at bathhouse; 1 hour at hospital; other repair—4½ hours repairing plumbing shop equipment at plumbing shop; 2 hours sewage system equipment in plantation village.

Apr. 14: Repair of plumbing facilities—41½ hours at dwellings; 1 hour at gymnasium; 3½ hours at bathhouse; ½ hour at hospital; other repair—4 hours repairing plumbing shop equipment at plumbing shop; 5½ hours sewage system equipment in plantation village; 2 hours fire hydrant.

Apr. 21: Repair of plumbing facilities—43 hours at dwellings; 2 hours at bathhouse; other repair—6 hours repairing plumbing shop equipment at plumbing shop; 3 hours water tank of locomotive.

Apr. 28: Repair of plumbing facilities—43 hours at dwellings; 1½ hours at gymnasium;

2½ hours at hospital; other repair—2½ hours repairing plumbing shop equipment at plumbing shop. [2156]

May 5: Repair of plumbing facilities—46 hours at dwellings; 2 hours at hospital.

May 12: Repair of plumbing facilities—42 hours at dwellings; 4½ hours at hospital; other repair—1 hour pipe line at Pump #4; 2½ hours water line of City and County of Honolulu; other work—1½ hours removing service equipment on Trucks #407 and 485 at plumbing shop.

May 19: Repair of plumbing facilities—49 hours at dwellings.

June 9: Repair of plumbing facilities—30 hours at dwellings; 3 hours at clubhouse; 3 hours at slaughter house; 8½ hours at hospital; other repair—½ hour repairing plumbing shop equipment at plumbing shop; 3½ hours pipe line at Pump #10.

June 16: Repair of plumbing facilities—13 hours at dwellings; 25 hours at bathhouse; 3 hours at Waialua Dairy; 1 hour at hospital; 3 hours at tractor repair shop; other repair—½ hour repairing plumbing shop equipment at plumbing shop; 3 hours water supply system at plantation village.

June 23: Repair of plumbing facilities—10 hours at dwellings; 38½ hours at bathhouse.

July 7: Repair of plumbing facilities—48½ hours at dwellings; 1 hour at bathhouse; 2 hours at hospital.

July 14: Repair of plumbing facilities—47½ hours at dwellings; 1 hour at garage.

July 21: Repair of plumbing facilities—44½ hours at dwellings; ½ hour at Waialua Dairy; 2 hours at main administration office; 1½ hours at hospital.

July 28: Repair of plumbing facilities—36 hours at dwellings; 4 hours at gymnasium; 2½ hours at plaintiff's retail store; 2 hours at mill; 3½ hours at hospital; other repair—1 hour repairing plumbing shop equipment at plumbing shop.

Aug. 4: Repair of plumbing facilities—36 hours at dwellings; 7 hours at gymnasium; ½ hour at church located in plantation village; 1½ hours at laboratory; ½ hour at hospital; other repair—2½ hours fire hydrant.

Sept. 8: Repair of plumbing facilities—3½ hours at dwellings; 2 hours at main administration office; 2 hours at beach home located near plantation, owner being charged for this plumbing repair work; 1 hour at hospital; other repair—39½ hours sewage system equipment in plantation village.

Regular hourly rate of pay, week commencing:

Nov. 18-Mar. 31, Apr. 28-July 21, $1.27; Apr. 7, $1.37; Apr. 14, 21, $1.395; July 28, $1.30; Aug. 4-Sept. 8, $1.35.

Amount unpaid and due: $145.67. [2157]

warehouse for plantation railroad; 7½ hours for concrete products plant; 14½ hours hauling crushed rock from off plantation to concrete products plant; 7 hours for roundhouse.

Regular hourly rate of pay, week commencing:
Nov. 18-July 21, $.975; July 28, $1.00; Aug. 4-Sept. 8, $1.04.

Amount unpaid and due: $127.89.

25. Jiro Sakai. This employee was attached to the paint shop. His work was uniform throughout the period covered by this case. In each week, he painted dwellings in the plantation villages. In addition, in the week commencing Feb. 17, he spent 4 hours painting the clubhouse, and in the week commencing March 24, he spent 34 hours painting the housing department office. The dwellings painted by him were to a substantial extent all occupied by employees of plaintiff.

Weeks presenting no issue because he worked no overtime hours:

Nov. 18, 25; Dec. 23, 30; Mar. 31; May 26; June 30; Aug. 25; Sept. 1.

In each of the remaining weeks covered by this case, overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt, and in each [2153] of which weeks he worked 8 overtime hours:

Dec. 2-16; Jan. 6-March 24; Apr. 7-May 19; June 2-23; July 7-Aug. 18; Sept. 8.

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $.97; July 28, $.99; Aug. 4-Sept. 8, $1.04.

Amount unpaid and due: $133.12.

26. Yukishige Tsutsui. This defendant was employed in the concrete products plant. He produced concrete irrigation flumes, water supply pipe, blocks, footings, sidewalk slabs, and a variety of other concrete products used as part of the irrigation system of the plantation and for other purposes noted below. All of his work was performed at the concrete products plant, with the single exception of the week commencing Mar. 10, when he worked 2 hours at one of the warehouses.

Weeks presenting no issue because he worked no overtime hours:

Nov. 18, 25; Dec. 23, 30; Feb. 10; Mar. 31; Apr. 7, 14; May 26; June 30; Aug. 25; Sept. 1.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt:

Dec. 9, 16; Jan. 13, 27; Feb. 24. (8 overtime hours in each week): producing concrete flumes, concrete pipes, and other concrete products used as part of irrigation system which supplied water principally to cane fields but also to a minute extent supplied boiler water for locomotives used on plantation railroads.

Dec. 2; Jan. 6, 20; Feb. 3, 17; Mar. 3, 17; Apr. 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; Aug. 4, 11, 18; Sept. 8: 8 overtime hours in each week except Dec. 2 (6 overtime hours); Apr. 21 (2 overtime hours); June 9 (4½ overtime hours); July 21 (1½ overtime hours): Performed work described in list of work weeks immediately preceding, and also produced concrete blocks used as foundations for dwellings of plaintiff's employees in plantation villages, and concrete products used as equipment in such dwellings.

Mar. 10: 48 hours, performing work described in two paragraphs immediately preceding; and 2 hours at warehouse as helper.

Mar. 24: Performed work described in first two paragraphs above, and produced square blocks used as sidewalks in plantation villages (48 hours). [2154]

Regular hourly rate of pay, week commencing:

Dec. 2, Jan. 20, $1.16; Dec. 9, $1.21; Dec. 16, $1.04; Jan. 6, $1.17; Jan. 13, $1.13; Jan. 27, June 2, $1.18; Feb. 3, May 19, $1.32; Feb. 17, Mar. 24, $1.34; Feb. 24, $1.39; Mar. 3, Apr. 21, $1.36; Mar. 10, $1.44; Mar. 17, $1.49; Apr. 28, $1.26; May 5, June 16, $1.24; May 12, June 9, $1.25; June 23, $1.40; July 7, $1.43; July 14, $1.53; July 21, $1.61; July 28, $1.59; Aug. 4, $1.75; Aug. 11, $1.70; Aug. 18, $1.71; Sept 8, $1.35.

Amount unpaid and due: $154.94.

27. Toshio Kashiwabara. This defendant was a plumber. His headquarters, the plumbing shop, was in a separate structure near the mill. There was little variation of assignment in his work. It was performed generally throughout different places on the plantation, but in the weeks commencing Feb. 10 and Sept. 8, small portions of his work took place off the plantation. The dwellings on whose plumbing facilities he performed repairs were all located in plantation villages and occupied, to a substantial extent, by plaintiff's employees. Water lines on which he worked were used to supply water to these dwellings and in certain cases to dwellings occupied by non-employees.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 9, 16, 23, 30; Mar. 31; May 26; June 2, 30; Aug. 11, 18, 25; Sept. 1.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt:

Dec. 2: Repair of plumbing facilities—42½ hours at dwellings; 1 hour at playground; 3½ hours at gymnasium; 1 hour at hospital.

Jan. 6: Repair of plumbing facilities—11 hours at dwellings; 37 hours at hospital.

Jan. 13: Repair of plumbing facilities—39 hours at dwellings; other repair—3 hours repairing plumbing shop equipment at plumbing shop.

28. Mori. This defendant was a carpenter. His central headquarters was the carpenter shop, a separate structure near the mill. His work was performed variously at the carpenter shop, and to a substantial extent, upon dwellings occupied by plaintiff's employees, and at plantation's housing department office. Some of his work was performed on railroad rock cars.

Weeks presenting no issue, because he did not work any overtime hours:

> Nov. 18, 25; Dec. 23, 30; Mar. 31; May 26; June 23, 30; July 7; Aug. 25; Sept. 1.

Weeks for which overtime was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt:

> Dec. 2: Repair at carpenter shop—30 hours cane cars; 2 hours portable track rail cars. Other work at carpenter shop—16 hours reconstructing railroad rock cars into portable track rail cars.
>
> Dec. 9: Repair at carpenter shop—35 hours cane cars; 6 hours portable track rail cars. Other work at carpenter shop—7 hours cutting pipes for use in irrigation.
>
> Dec. 16: Repair at carpenter shop—39 hours cane cars; 6 hours portable track rail cars. Other work at carpenter shop—3 hours cleaning carpenter shop.
>
> Jan. 6: Repair at carpenter shop—48 hours portable track rail cars.

Jan. 13: Repair at carpenter shop—21 hours cane cars; 27 hours portable track rail cars.

Jan. 20: Repair at carpenter shop—40 hours portable track rail cars; 8 hours dwellings.

Jan. 27: Feb. 3, 10, 17, 24; Mar. 3; Apr. 7; May 5, 12; July 14, 21, 28; Aug. 11: All hours, 48 in each week except May 5 (48¼ hours), repairing dwellings.

Mar. 10: Repair—32 hours dwellings. Other work—16 hours constructing new housing department office.

Mar. 17: Repair—18 hours dwellings. Other work—22 hours at carpenter shop constructing forms for cesspools for dwellings; 8 hours drawing plans for washhouse for dwellings.

Mar. 24: Repair—40 hours dwellings. Other work—8 hours drawing plans for wash houses for dwellings. [2158]

Apr. 14, 28; May 19; June 16; Aug. 4, 18; Sept. 8: All hours, 48 in each week, repairing dwellings and drawing plans for dwellings.

Apr. 21; June 2, 9: All hours, 48 in each week, drawing plans for dwellings.

Regular hourly rate of pay, week commencing:

Nov. 18-June 16, $.96; June 23, $1.03; June 30-July 21, $1.09; July 28, $1.12; Aug. 4-Sept. 8, $1.17.

Amount unpaid and due: $127.92.

29. Genjiro Hironaka. This defendant was one of 25 carpenters who, under 2 supervisors, performed all the carpenter work on the plantation. He engaged in a great variety of carpentry upon tools, equipment, locomotives, cane cars, shelter houses used by flagmen at railroad crossings, warning signs used on public roads crossing the plantation, improvements for dwellings, office equipment for the main administration building, fireroom equipment, equipment for many of the different service shops, such as the paint shop, electric shop, etc. All of his work was performed at the carpenter shop, except for 2 hours at the clubhouse in the week commencing Aug. 4.

Weeks in which he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

> Nov. 18, 25; Dec. 23, 30; Jan. 6, 13, 27; Feb. 3; Mar. 31; Apr. 28; May 5, 26; June 30; Aug. 11, 25; Sept. 1, 8.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt (Jan. 6, 13, 27; Feb. 3—overtime paid; plaintiff denies this was obligatory):

> Dec. 2: Repair—6 hours tools used in cane field operations; 1 hour mill equipment; 4 hours carpenter shop tools; 2 hours Locomotive #5; other work—4 hours making and repairing cane car equipment; 2 hours making equipment for

caneloading machine repair shop; 4 hours making improvements for dwellings; 8 hours carpentry work for use at Christmas program in clubhouse; 17 hours constructing shelter houses for flag men.

Dec. 9: Repair—4 hours tools used in cane field operations; 10 hours Trailer #341; 14 hours mill equipment; 4 hours carpenter shop tools; other work—4 hours making [2159] improvements for dwellings; 8 hours constructing shelter houses for flagmen; 4 hours constructing coffin.

Dec. 16: Repair—5 hours tools used in cane field operations; 2 hours cane cars; 14½ hours mill equipment; 6½ hours power plant equipment; 3 hours Truck #421; 1 hour carpenter shop tools; 2 hours Locomotive #6; 6 hours tools used in cutting firewood; other work—8 hours constructing shelter houses for flagmen.

Jan. 6: Repair—5 hours tools and equipment used in cane field operations; 8 hours mill equipment; 4 hours fireroom equipment; 3 hours power plant; 16 hours laboratory equipment; 3 hours carpenter shop tools; 2 hours Truck #402; other work—4 hours constructing shelter houses for flagmen; 3 hours educating children in carpentry work in connection with high school cooperative worker program.

Jan. 13: Repair—2 hours tools used in cane field operations; 16 hours mill equipment; 2 hours laboratory equipment; 1 hour welding

shop equipment; 1 hour concrete products plant tools; 10 hours tools used in cutting firewood; other work—5 hours making improvements for dwellings; 7 hours constructing shelter houses for flagmen; 4 hours constructing coffin.

Jan. 20: Repair—15 hours equipment used in cane field operations; 2 hours irrigation equipment; 2 hours cane cars; 3 hours Tractor #114; 3 hours mill equipment; 9½ hours carpenter shop tools; 3½ hours electric shop equipment; 2 hours parts for locomotives; 6 hours tools used in cutting firewood; 2 hours main administration office equipment.

Jan. 27: Repair—7 hours equipment used in cane field operations; 9 hours irrigation equipment; 14 hours mill equipment; 12 hours carpenter shop tools; 5 hours main administration office equipment; other work—1 hour constructing shelter houses for flagmen.

Feb. 3: Repair—1 hour equipment used in cane field operations; 20 hours mill equipment; 2 hours power plant equipment; 9 hours carpenter shop tools; 6 hours parts for locomotives; other work—4 hours carpentry work for warehouse; 6 hours making improvements for dwellings.

Feb. 10: Repair—2 hours tools used in cane field operations; 22 hours mill equipment; 3 hours power plant equipment; 2 hours carpenter shop tools; 3 hours tools used in mainte-

nance of plantation villages; 1 hour Pump Station #10 equipment; 6 hours main administration office equipment; other work—7 hours carpentry work for warehouse; 2 hours making improvements for dwellings.

Feb. 17: Repair—2 hours fences for use along plantation cane fields; 15 hours stable equipment; 10 hours Trucks #491, 506; 11½ hours mill equipment; 4 hours carpenter shop tools; other work—4 hours carpentry work for warehouse; 1½ hours making improvements for dwellings.

Feb. 24: Repair—3 hours tools used in cane field operations; 2 hours Truck #491; 9 hours mill equipment; [2160] 10 hours fireroom equipment; 6 hours carpenter shop tools; 5 hours parts for locomotives; 1 hour clubhouse equipment; 2 hours concrete products plant equipment; 8 hours tools used in cutting firewood; other work—1 hour making and repairing equipment for cane cars; 1 hour carpentry work for warehouse.

Mar. 3: Repairs—2 hours irrigation equipment; 18½ hours mill equipment; 2 hours cane-loading machine repair shop equipment; 2 hours electric shop equipment; 3 hours garage equipment; 10 hours tools used in cutting firewood; other work—6 hours making equipment for cane cars; 2½ hours making haul cane warning signs; 2 hours carpentry work for warehouse.

Mar. 10: Repair—8½ hours mill equipment;

1 hour Caneloading Machine #306; 2 hours carpenter shop tools; 20½ hours tools used in cutting firewood; other work—16 hours making improvements for dwellings.

Mar. 17: Repair—8 hours stable equipment; 10 hours mill equipment; 2 hours clubhouse equipment; other work—4 hours making improvements for dwellings; 21 hours carpentry work for construction of new housing department office; 3 hours constructing coffin.

Mar. 24: Repair—6 hours stable equipment; 2 hours Trailer #341; 21 hours mill equipment; 3 hours carpenter shop tools; 16 hours tools used in cutting firewood.

Apr. 7: Repair—7 hours cane cars; 4 hours mill equipment; 5 hours fireroom equipment; 7 hours carpenter shop tools; 3 hours electric shop equipment; other work –12 hours carpenter work for warehouse; 7 hours making main administration office equipment; 4 hours constructing coffin.

Apr. 14: Repair—6 hours Truck #491; 1 hour cane cars; 19½ hours mill equipment; 3 hours fireroom equipment; 2 hours carpenter shop tools; 1 hour electric shop equipment; 1 hour paint shop equipment; 3 hours Locomotive #5; 6 hours tools used in cutting firewood; other work—1 hour carpentry work for warehouse; 3 hours making improvements for dwellings; 1½ hours making equipment used in constructing part of sewage system for plantation village.

Apr. 21: Repair—4 hours equipment and tools used in cane field operations; 14½ hours mill equipment; 2 hours fireroom equipment; 6 hours carpenter shop tools; 1 hour concrete products plant equipment; 1 hour electric shop equipment; 2 hours Truck #452; other work—4 hours making improvements for dwellings; 13½ hours constructing coffin.

May 12: Repair—36 hours mill equipment; 1 hour laboratory equipment; 6 hours carpenter shop tools; 3 hours roundhouse equipment; 2 hours concrete products plant equipment.

May 19: Repair—3 hours tools used in cane field operations; 20 hours mill equipment; 9 hours fireroom equipment; 5 hours carpenter shop tools; 2 hours welding shop equipment; 1 hour electric shop equipment; 2 hours equipment used in maintenance of plantation villages; 4 hours tools [2161] used in cutting firewood; 1 hour Truck #406; other work—1 hour making improvements for dwellings.

June 2: Repair—11 hours Truck #520; 22 hours irrigation equipment; 5 hours carpenter shop tools; 2 hours equipment for locomotives; other work—5 hours making equipment used in cane field operations; 3 hours constructing coffin.

June 9: Repair—4 hours Truck #520; 12 hours carpenter shop tools; other work—2 hours making irrigation equipment; 30 hours making improvements for dwellings.

June 16: Repair—13 hours tools used in cane field operations; 18 hours mill equipment; 5 hours fireroom equipment; 8 hours electric shop equipment; other work—2 hours making improvements for dwellings; 2 hours constructing coffin.

June 23: Repair—6 hours tools used in cane field operations; 10 hours irrigation equipment; 8 hours carpenter shop tools; 4 hours concrete products plant equipment; 10 hours Trucks #403, 523; other work—2 hours carpentry work for warehouse; 2 hours making improvements for dwellings; 6 hours constructing coffin.

July 7: Repair—2 hours tools used in cane field operations; 5 hours cane cars; 13 hours mill equipment; 4 hours fireroom equipment; 2 hours carpenter shop tools; 2 hours main administration office equipment; other work—20 hours making improvements for dwellings.

July 14: Repair—4 hours tools used in cane field operations; 3 hours irrigation equipment; 16 hours mill equipment; 2 hours fireroom equipment; 7 hours carpenter shop tools; 3 hours concrete products plant tools; 6 hours tools used in cutting firewood; 7 hours Truck #408.

July 21: Repair—24 hours tools and equipment used in cane field operations; 7 hours Truck #527; 11 hours mill equipment; 2 hours carpenter shop tools; other work—4 hours carpenter work for hospital.

July 28: Repair—1 hour equipment used in cane field operations; 9 hours Truck #528; 10 hours carpenter shop tools; other work—28 hours making improvements for dwellings.

Aug. 4: Repair—5 hours tools used in cane field operations; 18 hours mill equipment; 4 hours carpenter shop tools; 12 hours concrete products plant equipment; 3 hours electric shop equipment; 1 hour tools of plumbing shop; 3 hours equipment for locomotives; other work—2 hours carpentry work at clubhouse.

Aug. 18: Repair—4 hours tools used in cane field operations; 4 hours irrigation equipment; 4½ hours stable equipment; 8 hours mill equipment; 6 hours fireroom equipment; 3 hours electric shop equipment; ½ hour garage equipment; 16 hours Trucks #529, 530; other work—2 hours making haul cane warning [2162] signs.

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $1.27; July 28, $1.30; Aug. 4-Sept. 8, $1.35.

Amount unpaid and due: $132.84.

30. Antone Robello. This defendant was one of the field service men employed at the garage. Some of his work was performed at the garage, concrete products plant, at the roundhouse (where he serviced diesel and gasoline locomotives), and the cane-loading machine repair shop. He regularly drove

a truck into the cane fields, where his principal activities took place, to service tractors and cane-loading machines.

Weeks in which he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 16, 23, 30; Jan. 6, 13; Feb. 17; Mar. 24, 31; May 12, 19, 26; June 9, 30; Aug. 4, 11, 25; Sept. 1, 8.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt (Jan. 6, 13—overtime paid; plaintiff denies this was obligatory):

Dec. 2 (48 hours); Apr. 21 (58 hours); June 16 (61 hours); June 23 (68 hours); July 14 (48 hours); July 21 (48 hours); Aug. 18 (48 hours): All hours servicing (a) caneloading machines and/or tractors, and (b) air compressors or concrete mixer, or both.

Dec. 9: Servicing—34½ hours caneloading machines and tractors; ½ hour concrete mixer; 9½ hours automobiles and trucks at garage; ½ hour equipment at concrete products plant.

Jan. 6: Servicing—38 hours tractors; 3 hours equipment at concrete products plant; 3 hours Locomotive #8 at roundhouse; other work—4 hours repairing Truck #408 at garage.

Jan. 13: Servicing—47 hours tractors; other work—1 hour repairing automobile and truck tires at garage.

Jan. 20: Servicing—24 hours tractors; 2 hours Truck #418 at garage; other work—14 hours repairing parts for all caneloading machines at caneloading machine repair shop; 8 hours operating school bus to transport children of plaintiff's employees to and from schools on plantation and their homes in plantation villages. [2163]

Jan. 27: Servicing—12½ hours tractors; 7 hours Locomotive #8 roundhouse; other work—28½ hours repairing Truck #418 at garage.

Feb. 3: Servicing—36½ hours caneloading machines and tractors; 1 hour air compressors and concrete mixer; ½ hour servicing herbicide sprayer at roundhouse; other work—10 hours repairing Truck #418 at garage.

Feb. 10 (48 hours); Mar. 10 (48 hours); Mar. 17 (49 hours): All hours servicing caneloading machines, tractors, air compressors, and concrete mixer, and repairing Truck #418 at garage.

Feb. 24: Servicing—44 hours caneloading machines and tractors; 2½ hours air compressor and concrete mixer; other work—1½ hours repairing Truck #441 at garage.

Mar. 3: Servicing—47½ hours caneloading machines and tractors; ½ hour servicing Locomotive #8 at roundhouse.

Apr. 7: Servicing—42½ hours caneloading machines and tractors; 3 hours air compressor and concrete mixer; 2 hours Truck #418 at garage; ½ hour fire equipment trailer at garage.

Apr. 14; July 28: All hours, 48 in each week, servicing caneloading machines and tractors.

Apr. 28: Servicing—45 hours caneloading machines and tractors; ½ hour concrete mixer; ½ hour fire equipment trailer at garage; 2 hours equipment at garage; other work—½ hour repairing air compressor; 5½ hours repairing Truck #418 at garage.

May 5: Servicing—44½ hours caneloading machines and tractors; 1½ hours air compressor and concrete mixer; 2½ hours equipment at garage; ½ hour Locomotive #8 at roundhouse; other work—1 hour repairing Truck #418 at garage.

June 2: Servicing—36 hours caneloading machines and tractors; ½ hour air compressors; 6 hours equipment at concrete products plant; ½ hour fire equipment trailer at garage; 2 hours equipment at garage; ½ hour Locomotive #8 at roundhouse; 1½ hours equipment at mountain home on plantation maintained for recreational use of plaintiff's employees; other work—3 hours repairing Truck #418 at garage.

July 7: Servicing—65 hours tractors; ½ hour fire equipment trailer at garage.

Regular hourly rate of pay, week commencing:

Nov. 18—July 21, $.96; July 28, $.99; Aug. 4—Sept. 8, $1.04.

Amount unpaid and due $85.40. [2164]

Village Maintenance

31. Three of the defendants were employed in connection with maintenance of village facilities.

32. Yoshiji Yamada. This defendant was attached to the carpenter shop. In addition to working on plaintiff's dwellings, he performed some of his work in the cane fields, at the mill, and at other places on the plantation. Dwellings repaired by him were located in the plantation villages and were occupied to a substantial extent by plaintiff's employees.

Effective Mar. 31, 1947, he was promoted to supervisor of the housing department. After that date, he was exempt from the overtime provisions of the Act, pursuant to Section 13 (a) (1).

In the week commencing Jan. 13, he was taken from his usual work and assigned to repair irrigation equipment located in the cane fields. Accordingly, for that week only, his work was incidental to and in conjunction with the maintenance of plaintiff's irrigation system, so as to make the exemption of Section 13 (a) (6) applicable.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 16, 23, 30; Jan. 27.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt (except Jan. 27, overtime paid; plaintiff denies this was obligatory);

Dec. 2, 9; Mar. 24: 48 hours in each week, repairing dwellings.

Jan. 6, 20; Feb. 10: 48 hours in each week, repairing dwellings and irrigation [2165] equipment.

Jan. 27: Repair—8 hours dwellings; 8 hours irrigation equipment; 32 hours at mill on machinery and equipment used in cane processing operations.

Feb. 3: Repair—43 hours irrigation equipment; 5 hours water tank located along main line railroad used to supply water to locomotives.

Feb. 17: Repair—22 hours dwellings; 16 hours irrigation equipment; 10 hours portable track equipment in cane fields.

Feb. 24: Repair—24 hours dwellings; 19½ hours Pump #8 equipment.

Mar. 3: 48 hours repairing sewer system in plantation village.

Mar. 10: Repair—31 hours dwellings; 5 hours sewer system in plantation village; other work—8 hours operating pick-up truck hauling materials from warehouse and mill yard to plantation village for use in repairing dwellings; 4 hours constructing new housing department office.

Mar. 17: Repair—43½ hours dwellings; 4½ hours sewer system in plantation village.

Regular hourly rate of pay during all weeks covered by this case: $1.27.

Amount unpaid and due: $58.10.

33. Roque Crisostomo. This defendant was employed to operate plaintiff's grader in connection with maintenance of village roads and field roads, and also in the cane fields. The grader was used for leveling and shaping roads, and installing water drainage for their preservation. Use of the grader in the fields was to build irrigation banks to prevent run-off of water, to level off high spots and fill in old ditches preparatory to planting. He also made repairs on the grader, as well as on tractors, all such repair work being performed either at the garage or tractor repair shop. He also performed a variety of other tasks shown below.

Weeks presenting no issue, because he either worked no overtime, or worked overtime hours for all of which he received overtime pay:

Nov. 18, 25; Dec. 23, 30; Mar. 31; May 26; June 9, 30; Aug. 26; Sept. 1. [2166]

Weeks for which overtime pay was improperly withheld, for hours between 40 and 48, inasmuch as his activities were non-exempt:

Dec. 2: Repair—4 hours Tractor #106; 7 hours grader; operating grader—25 hours on field roads; 14 hours in cane fields.

Dec. 9: Repair—24 hours Tractors #106, 132, 136; operating grader—6½ hours for leveling at playground area; 18½ hours in cane fields.

Dec. 16: Repair—30 hours Tractor #105; 2 hours grader; other work—½ hour piling

firewood; 7 hours hauling sand for use in repair of field and plantation village roads; 4 hours hauling benches and chairs from gymnasium to school; 3½ hours hauling fertilizer from storage area in mill yard to cane fields.

Jan. 6: Repair—4 hours grader; operating grader—45½ hours on field roads.

Jan. 13: Repair—4 hours grader; operating grader—19½ hours on village roads; 18½ hours on field roads; 6 hours in cane fields.

Jan. 20: Repair—1 hour grader; operating grader—14 hours on village roads; 21 hours on field roads; 14 hours in cane fields.

Jan. 27: Operating grader—8 hours on village roads; 24 hours on field roads; 16 hours in cane fields.

Feb. 3: Operating grader—1½ hours to construct banks for disposal area; 22 hours on field roads; 10 hours in cane fields; other work—2½ hours hauling lumber from plantation warehouse to macadamia nut grove; 2½ hours hauling crushed rock from concrete products plant to cane fields for use in repairing irrigation system; 1½ hours hauling rubbish from plantation villages to disposal area; 1 hour hauling furniture from home of employee of plaintiff in plantation village to home of another such employee in plantation village; 8½ hours piling and hauling firewood.

Feb. 10: Operating grader—35½ hours on field roads; ½ hour for leveling around planta-

tion buildings and yard area; 12 hours in cane fields.

Feb. 17: Repair—2½ hours grader; operating grader—2 hours leveling playground of Waialua Community Association, off the plantation; 31 hours on field roads; 13 hours in cane fields.

Feb. 24: Operating grader—3 hours leveling playground of Waialua Community Association; 13 hours on field roads; 8 hours in cane fields; other work—8 hours hauling firewood; 12 hours hauling rubbish from plantation villages to disposal area. [2167]

Mar. 3 (48 hours); Mar. 17 (51½ hours); Apr. 14 (48 hours); June 16 (52½ hours); June 23 (48 hours); Aug. 11 (50½ hours); Aug. 18 (48 hours): All hours repairing grader and operating grader in cane fields and on field roads.

Mar. 10: Repair—37 hours Tractors #103, 127; 11 hours grader.

Mar. 24: Repair—3 hours sewer system at plantation village; operating grader—35 hours on field roads; 4 hours in cane fields; other work—6½ hours servicing and repairing grader.

Apr. 7 (46½ hours); May 12 (48 hours); July 28 (48 hours): All hours operating grader on field roads and in cane fields.

Apr. 21: Repair—4 hours grader; operating grader—12 hours on field roads; 20 hours in cane fields; other work—7 hours hauling fer-

tilizer and other supplies from plantation warehouses and yard area to cane fields or from cane field to cane field; 1 hour hauling cane tops from cane fields to plantation stable.

Apr. 28: Repair—9 hours grader; 4 hours part of irrigation system; operating grader—2 hours leveling grounds of independent retail service station and garage in plantation village; 25 hours on field roads; other work—8 hours hauling sand to roundhouse for sanding locomotives.

May 5: Repair—1 hour grader; operating grader—27 hours on field roads; 4 hours in cane fields; other work—2½ hours hauling supplies and equipment from concrete products plant and plantation warehouse to cane fields for repair of irrigation system; 7½ hours hauling fertilizer or other field supplies or mules from plantation warehouses or stable to cane fields, or from cane field to cane field; 4½ hours hauling rubbish from plantation village to disposal area, and operating grader to level such area; ½ hour piling firewood; 1 hour hauling sand to concrete products plant.

May 19: Repair—5½ hours grader; operating grader—24 hours on village roads; 2½ hours leveling grounds at independent retail service station and garage in plantation village; 12 hours on field roads; 4 hours in cane fields.

June 2: Repair—1½ hours grader; operating grader—13 hours on field roads; 17½ hours in cane fields; other work—10 hours hauling

supplies and equipment from concrete products plant to cane fields for repair of irrigation system and removing broken flumes; 5 hours hauling cane seed from cane field to cane field; 1 hour piling firewood.

July 7: Repair—1½ hours grader; operating grader—1 hour leveling ground around Pump #2; 33½ hours on field roads; 12 hours in cane fields. [2168]

July 14: Repair—3½ hours grader; operating grader—8 hours to level site in plantation village for home of employee of plaintiff; 16 hours on field roads; 20½ hours in cane fields.

July 21: Operating grader—8 hours to level site in plantation village for home of employee of plaintiff; 6 hours on field roads; 34 hours in cane fields.

Aug. 4: Repair—2 hours grader; operating grader—2 hours to level grounds around gymnasium; 32 hours on field roads; 12 hours in cane fields.

Sept. 8: Repair—2 hours grader; 3 hours part of irrigation system; operating grader—16 hours leveling around plantation buildings and yard area; 3 hours leveling playground at church in plantation village; 24 hours on field roads.

Regular hourly rate of pay, week commencing:

Nov. 18-July 21, $1.085; July 28, $1.10; Aug. 4-Sept. 8, $1.135.

Amount unpaid and due: $137.54.

34. Moses Fernandez. This defendant was employed as village cleaner. This work was part of plaintiff's maintenance of its employees' housing, and the villages where such housing was located.

During most of the period involved in this case, this defendant worked no overtime hours. There are 11 weeks for which overtime pay was improperly withheld, for work between 40 and 48 hours, inasmuch as his activities were non-exempt:

Dec. 16 (44 hours); Apr. 14 (48 hours); Apr. 21 (48 hours); May 19 (48 hours): All hours cleaning roads in plantation villages.

Feb. 17 (48 hours); Feb. 24 (44 hours); Mar. 17 (48 hours): All hours cleaning roads and parks and playgrounds in plantation villages.

Jan. 20: 33 hours cleaning roads in plantation villages; 10 hours cleaning cemetery; 5 hours hoeing weeds in cane fields.

Mar. 10: 20 hours cleaning roads and parks and playgrounds in plantation villages; 24 hours hoeing weeds in cane fields; 4 hours bundling cane leaves.

May 12: 30 hours cleaning roads in plantation villages; 2 hours cleaning gymnasium; 16 hours weeding at macadamia nut grove. [2169]

June 16: 32 hours cleaning roads in plantation villages; 4 hours cleaning yards of plaintiff's employees in plantation villages; 8 hours bundling cane leaves.

Regular hourly rate of pay, all weeks: $.76.

Amount unpaid and due: $28.88.

Miscellaneous

35. Certain defendants were attached to the warehouse, laboratory, and office departments respectively.

36. Louis Pacheco. This defendant was employed in the laboratory, a building separate and apart from the mill, and under the supervision of a chief chemist. His regular and uniform duties consisted of collecting daily samples of cane leaves from various fields and preparing them for a foliar chemical analysis in the laboratory. In preparing samples he chopped, ground, dried, and weighed them. These tasks completed, he proceeded to the main administration office where h work consisted of clerical activities pertaining to the assembly of laboratory information and its correlation with other growth factors and data; this was to permit maintenance of a graphic log of all factors of weather, irrigation and fertilization which might affect the growth and production of cane.

This defendant s work was necessary for, and closely related to, plaintiff's production operations. Nothing, however, in the activities performed by this employee was either agricultural, or part of the processing operation at the mill. As a laboratory technician, he was entitled to receive overtime, inasmuch as none of the pleaded exemptions are applicable.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay:

Nov. 25; Dec. 23, 30; Jan. 6; Mar. 31; May 26; June 30; Aug. 25; Sept. 1. [2170]

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as his activities were non-exempt:

Nov. 18 (2 overtime hours); and in each of the following weeks 8 overtime hours: Dec. 2, 9, 16; Jan. 13, 20, 27; Feb. 3, 10, 17, 24; Mar. 3, 10, 17, 24; Apr. 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; Aug. 4, 11, 18; Sept. 8.

Regular hourly rate of pay, weeks commencing:

Nov. 18, $.83; Nov. 25-July 21, $.95; July 28, $.97; Aug. 4-Sept. 8, $1.00.

Amount unpaid and due: $127.11.

37. Margaret Fujiwara. This defendant was employed in the laboratory during the grinding season, and as a clerk in one of the warehouses during the off-season. For her work in the warehouse she was paid overtime for all hours in excess of 40 per week. This payment, the court finds, was an obligation under the Act.

Her laboratory work consisted of making analyses of sugar juices and syrups; determining hydrogen ion, density and salt concentrates of water that was used in the mill and for locomotives; checking pump water for irrigation purposes, and for domestic purposes in the plantation villages; and checking for impurities in water. She also typed reports and did clerical work for the laboratory.

She assisted in making nitrogen and moisture analyses of cane leaf blades and analyses of sugar in cane leaf sheaths. In addition, during the following workweeks she spent the number of hours specified below in recharging fire extinguishers used in the fire protection system of the plantation: 3 hours in the workweek commencing March 10; 5 hours in the workweek commencing March 17, and 4 hours in the workweek commencing September 8. Furthermore, during the following workweeks she spent the number of hours specified below in substituting for the senior laboratory analyst, making analyses of sugar and molasses produced by the plantation: 24 hours in the workweek commencing April 14, and 24 hours in the workweek commencing April 21. [2171]

The disposition heretofore made in regard to the activities, as a laboratory technician, of the defendant Pacheco applies with equal force to this employee. And that portion of her activities which involved work as a clerk in one of the warehouses, is also non-exempt.

Weeks in which she either worked no overtime hours, or worked overtime hours for all of which she received overtime pay:

> Nov. 18, 25; Dec. 23, 30; Jan. 6, 13, 20, 27; Feb. 3; Mar. 31; May 26; June 30; Aug. 11, 18, 25; Sept. 1.

Weeks for which overtime pay was improperly withheld, for hours worked between 40 and 48, inasmuch as her activities in the laboratory and in

recharging fire extinguishers during the grinding season were non-exempt:

Dec. 2 (4½ overtime hours); Dec. 16 (4 overtime hours); July 28 (5 overtime hours); and in each of the following weeks, 8 overtime hours: Dec. 9; Feb. 10, 17, 24; Mar. 3, 10, 17, 24; Apr. 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21; Aug. 4; Sept. 8.

Regular hourly rate of pay, for week commencing:

Nov. 18-Apr. 7; Apr. 28-July 21, $1.035; Apr. 14, 21, $1.06; July 28, $1.05; Aug. 4-Sept. 8, $1.085.

Amount unpaid and due: $106.98.

38. In their proposed findings of fact and conclusions of law, the defendants now concede, and the Court finds, that there are no sums owing to the following employees:

1. Augustine Lorenzo
2. Haru Kibota
3. Bernabe Hernandez
4. Pedro Dumlao
5. Ushinosuke Kondo
6. Simon Cumlat
7. Apolonio Lazo
8. Teruichi Kubo
9. Giichi Hamamoto
10. Yack Chun Lee
11. Eiko Sakaguchi [2172]

39. Tractors

The work performed by plaintiff's tractors consisted principally of plowing, ratooning, and other field operations; and in addition, the following:

Tractor No. 101—In three workweeks repaired field roads; in one workweek did work relating to plantation villages; in one workweek leveled house lot of a non-employee of plaintiff, off the plantation; in two workweeks bulldozed sand.

Tractors Nos. 105, 113 and 114—In one or two workweeks did haul cane work.

Tractors Nos. 107, 116, 118, 119 and 137—Throughout the grinding seasons, laid and lifted portable track in cane fields; in a few workweeks (not exceeding 9) did haul cane work.

Tractors Nos. 108 and 110—In six or seven workweeks laid and lifted portable track in cane fields; in one or two workweeks broomed cane; throughout the grinding seasons did haul cane work.

Tractors Nos. 109 and 111—Throughout the period covered by the litigation transported service truck to and from cane fields and mill yard.

Tractor No. 112—In two workweeks did haul cane work; in one work-week leveled playground area.

Tractor No. 115—In three workweeks repaired field roads; in two workweeks constructed banks for disposal area for mud refuse

from cane cleaning plant and boiling house of mill; in one workweek worked on disposal of mill trash.

Tractor No. 117—Throughout the grinding seasons laid and lifted portable track in cane fields and did haul cane work; in four workweeks broomed cane; in one workweek cleaned reservoir.

Tractor No. 121—Throughout the period from February to and including May, 1947, repaired field roads.

Tractors Nos. 122 and 130—In a few workweeks (not exceeding 4) laid and lifted portable track in cane fields; throughout the grinding seasons did haul cane work.

Tractor No. 124—In one workweek constructed macadamia nut nursery; in one workweek leveled playground area.

Tractor No. 125—In one workweek did haul cane work; throughout the period covered by the litigation repaired field roads; in six workweeks cleaned reservoir; in one workweek dislodged rails on the plantation which had been placed there by the United States Army as lessee of part of the plantation premises during the war, which rails were removed to storage on plantation and [2173] later incorporated into the main line of the plantation railroad; in seven workweeks constructed banks for disposal area; in one workweek worked on disposal of mill trash; in one workweek did work relating to plantation villages; in one workweek leveled playground area.

Tractor No. 126—Throughout the period covered by the litigation repaired field roads; in one workweek worked on maintenance of main line of plantation railroad; in six workweeks constructed banks for disposal area; throughout the months of March, April, May and August, 1947, worked on disposal of mill trash; in two workweeks leveled playground areas; in one workweek collected firewood.

Tractors Nos. 129, 134, 136 and 143—In a few workweeks (not exceeding 5) repaired field roads.

Tractor No. 131—In one workweek plowed at mountain home on plantation maintained for recreational use of plaintiff's employees.

Tractor No. 133—In one workweek repaired field roads; in one workweek leveled yard of stable.

Tractor No. 135—In two workweeks worked on irrigation system; throughout the months of December, 1946, and January and February, 1947, repaired field roads; in five workweeks dislodged rails as aforesaid with respect to tractor No. 125; in one workweek constructed banks for disposal area; in eight workweeks worked on disposal of mill trash.

Tractor No. 138—Throughout the grinding seasons laid and lifted portable track in cane fields.

Tractor No. 139—In one workweek repaired field roads; in one workweek did work relating to plantation villages.

Tractor No. 144—In one workweek laid and lifted portable track in cane fields; in two workweeks did haul cane work; in one workweek repaired field roads; in two workweeks constructed banks for disposal area; in three workweeks removed rocksand cement from mud press pit at mill to widen same, the pit being used to dispose of waste from the boiling house of the mill; in two workweeks pulled down trees for firewood.

Tractor No. 145—In two workweeks laid and lifted portable track in cane fields; throughout the months of July, August and September, 1947, did haul cane work.

Tractor No. 146—In one workweek leveled in mill yard for service station.

Tractor No. 150—Throughout the period covered by the litigation hauled products produced at the concrete products plant to the places of use thereof on the plantation, and did other hauling on the plantation in [2174] connection with the operations of said plant.

Tractor No. 151—In one workweek laid and lifted portable track in cane fields; throughout the grinding seasons broomed cane; in four workweeks did haul cane work; in three workweeks repaired field roads.

Tractor No 152—In two workweeks laid and lifted portable track in cane fields; throughout the grinding seasons broomed cane; in four workweeks did haul cane work.

Tractor No. 188—Throughout the period covered by the litigation hauled products produced at the concrete products plant to the places of use thereof on the plantation.

Tractor No. 189—Throughout the period covered by the litigation hauled mud from the mud press pit at the mill referred to above with respect to tractor No. 144 to the place of disposal thereof on the plantation.

The sand referred to in this finding, relating to the work of tractor No. 101, was used in connection with the following operations: irrigation, railroad transportation, field road transportation, construction and repair of floors and foundations for machinery in the mill building, service shops, concrete products plant, and plantation villages.

The irrigation operations and reservoir referred to in this finding supplied water mainly for the irrigation of cane fields, but to some extent they also supplied boiler water for locomotives of the plantation railroad.

For administrative purposes, plaintiff grouped some of its tractors according to their respective horsepowers. The several groups were as follows: Group I Tractors—124, 151 and 152; Group II Tractors—107, 109-111, inclusive, 115, 117, 118, 121 and 131-142, inclusive; Group III Tractors—103-106, inclusive, 108, 114, 116, 119, 122, 126, 130, 143 and 144; and Group IV Tractors—102, 112, 113, 125, 145 and 146.

40. Tractor Auxiliary Implements

The following is a list of all of the tractor auxiliary implements owned by plaintiff for the period covered by the litigation, showing the nature of the work performed by each:

Implements Nos. 201, 201A, 202, 203, 221, 252, and 259 (Disc plows, plow subsoilers, disc harrow, and side plow)—Plowing, and preparing fields for planting.

Implements Nos. 211 and 255 (Mouldboards)—Digging ditches in fields.

Implements Nos. 231 and 231A (Bulldozers)—Bulldozing cane into piles in [2175] fields.

Implement No. 232 (Bulldozer Cane Rake)—Making fire breaks and opening portable track lines in fields.

Implements Nos. 233 and 233A (Portable Track Levelers)—Leveling lines for portable tracks in fields.

Implements Nos. 234 and 234A (Portable Track Layers)—Laying and lifting portable tracks in fields.

Implement No. 241 (Planter) — Planting cane.

Implements Nos. 243, 244, 245, 246, 247, 248, and 250 (Winches and Gear Pumps—Lifting and lowering other tractor auxiliary implements listed in this finding.

Implements Nos. 251 and 251A (Attachment Frames)—Frames for attaching other tractor

auxiliary implements listed in this finding to tractors.

Implement No. 254 (Car Lifting Equipment)—Lifting cane cars in fields.

Implement No. 258 (Steel Disc Cultivator)—Weeding in fields.

Implement No. 259C (Reshaping Cultivator (Disc Plow))—Cultivating in fields.

Implements Nos. 281 and 284 (Stoneboat Sleds and Drags)—Removing stones from fields.

Implements Nos. 289 and 289A (Cane Carts)—Pickup of cane in fields.

Implements Nos. 321 and 322 (Cane Grabs and Small Cane Grabs)—Cutting and loading cane.

41. Caneloading Machines

The work performed by plaintiff's caneloading machines consisted principally of cutting and loading cane in the fields, and also the following:

Caneloading Machines Nos. 301 and 304—In one workweek reloaded cane cars after same had been unloaded and the cane cleaned in order to remove excessive mud. This operation was performed while the cane cars were on the main line of the plantation railroad adjoining the harvesting field.

Caneloading Machine No. 302—In one workweek unloaded cane cleaning plant equipment from freight cars at the cane cleaning plant; in one workweek loaded mill trash at mill yard

on trucks to be removed by trucks for disposal on plantation.

Caneloading Machine No. 305—In one workweek worked on the installation of equipment in the crushing plant. [2176]

Caneloading Machine No. 306—In four workweeks constructed banks for disposal area on the plantation for mud refuse from the cane cleaning plant and boiling house; in two workweeks constructed sewage disposal system at a plantation village.

Caneloading Machine No. 308—In four workweeks constructed drainage systems for draining fields, or cleaned storm ditches in fields; in one workweek loaded dirt on truck in field to be transported for use at herbicide station on plantation; in fourteen workweeks cleaned irrigation system ditches or reservoir; in one workweek loaded railroad rails for removal to storage on the plantation, these rails having been placed on the plantation by the United States Army as lessee of part of the plantation premises during the war (the rails were later incorporated into the main line of the plantation railroad); throughout the period covered by the litigation loaded mill trash; in nine workweeks constructed sewage disposal systems or repaired water supply systems for plantation villages or loaded rubbish from such villages on trucks, to be removed by trucks for disposal on plantation; in two workweeks in-

stalled equipment at a bathhouse; in one workweek unloaded an icebox for a non-employee of the plaintiff at the place of business, off the plantation, of said non-employee; in one workweek moved and stored sand on the plantation.

Caneloading Machine No. 309—In two workweeks cleaned reservoir; throughout the months of May and June, 1947, constructed banks for disposal area; throughout the months of May to and including August, 1947, loaded mill trash; in two workweeks constructed sewage disposal system at Waialua Dairy on plantation land leased to Dairy, all of the products of the dairy being consumed on the Island of Oahu.

Northwest Caneloading Machines — In two workweeks cleaned storm ditches in cane fields; in one workweek constructed banks for disposal area; in one workweek loaded lumber on trucks at storage area on plantation to be transported to fire room for construction of bagasse storage equipment; throughout the months from February to and including April, 1947, loaded mill trash; in six workweeks constructed sewage disposal systems at plantation villages.

42. Pumps

The use of the water supplied by each pump of the plaintiff—engaged in pumping water from the ground—during the period covered by the litigation is set forth below:

Pumps Nos. 1, 2A, 4, 6, 7, 12, 13, 14, 15, 16

and Mill 4 (irrigation booster) — Irrigation only.

Pumps Nos. 2, 3, 9, 10 and 11 — Irrigation and plantation village.

Pumps Nos. 2B and 3C—Plantation village only. [2177]

Pumps Nos. 5 and 8—Irrigation, plantation village, and to some extent boiler water for locomotives used on plantation railroad.

Mill Pump—Used for various mill operations, including cane cleaning plant, the mill carrier, crushing plant, boiling house operations, operations in fire room and power plant operations; also irrigation and plantation village; and for fire protection purposes.

Pumps Nos. 3 and 4 used steam power generated by the use of oil.

The other pumps listed in this finding used electrical power.

43. Locomotives

The work performed by plaintiff's locomotives consisted principally of hauling empty cane cars to fields to be loaded with cane, and hauling loaded cars from the fields to the mill yard; and in addition as follows:

Locomotive No. 1—In two workweeks hauled portable track rail cars; in seven workweeks hauled in connection with maintenance of main line of plantation railroad; in two workweeks engaged in hauling of raw sugar, molasses and freight, and mill yard switching.

Locomotive No. 2—Throughout the period covered by the litigation hauled portable track rail cars, engaged in hauling of raw sugar, molasses, and freight, and mill yard switching, and hauled oil cars; in two workweeks hauled in connection with maintenance of main line of plantation railroad; in one workweek hauled scrap iron away from mill yard.

Locomotive No. 3—Throughout the period covered by the litigation hauled portable track rail cars; in one workweek hauled cane grab from mill yard to cane field to be attached to caneloading machine; in three workweeks switched broken cane cars in mill yard; in four workweeks engaged in hauling of raw sugar, molasses, and freight, and mill yard switching; in seven workweeks hauled oil cars.

Locomotive No. 4—Throughout the period covered by the litigation hauled portable track rail cars; in three workweeks switched broken cane cars in mill yard; in three workweeks engaged in hauling of raw sugar, molasses, and freight, and mill yard switching; in 12 workweeks hauled oil cars.

Locomotive No. 5—Throughout the period covered by the litigation hauled portable track rail cars; in one workweek hauled in connection with maintenance of main line of plantation railroad; in two workweeks switched broken cane cars in mill yard; in six workweeks engaged in hauling of raw sugar,

molasses, and freight, and mill yard switching; in six workweeks hauled oil cars. [2178]

Locomotive No. 6—Throughout the period covered by the litigation hauled portable track rail cars; in four workweeks hauled in connection with maintenance of main line of plantation railroad; in one workweek switched broken cane cars in mill yard; in four workweeks engaged in hauling of raw sugar, molasses, and freight, and mill yard switching.

Locomotive No. 7—Throughout the period covered by the litigation hauled portable track rail cars, engaged in hauling of raw sugar, molasses, and freight, and mill yard switching, and hauled oil cars; in one workweek hauled in connection with maintenance of main line of plantation railroad.

Locomotive No. 8—Throughout the period covered by the litigation hauled portable track rail cars, hauled in connection with maintenance of main line of plantation railroad, engaged in hauling of raw sugar, molasses, and freight, and mill yard switching, and hauled oil cars; in one workweek hauled pipes from mill yard to field drainage pipeline in cane field; in three workweeks hauled scrap iron away from mill yard.

The hauling in connection with maintenance of main line of plantation railroad, referred to above, included hauling of trash and dirt to be used for leveling uneven sections of trackway,

hauling railroad ties or track to be used for main line of plantation railroad, and spraying herbicides along said main line.

The hauling of raw sugar, molasses and freight and mill yard switching referred to in this finding, consisted of (a) hauling raw sugar and molasses from the plantation and incoming freight to the plantation, and (b) switching sugar cars, molasses cars, freight cars, cane cars and portable track rail cars in and about the mill yard.

The hauling of oil cars referred to above consisted of hauling oil cars to pumps Nos. 3 and 4 and empty oil cars away from said pumps.

The scrap iron referred to in this finding constituted former equipment and materials of plaintiff which had become useless and which were therefore sold by the plaintiff as scrap iron.

44. Trucks and Trailers

The work performed by various of plaintiff's trucks and trailers is set forth below:

Trailers Nos. 340, 341 and Truck No. 400—Transported tractors and caneloading machines during the grinding seasons from plantation buildings and yard area to and from cane fields. **[2179]**

Trucks Nos. 401, 402, 403, 404, 406, 408, 409 and 530—Hauled in connection with following

operations of the plaintiff: (a) cane field, (b) irrigation, (c) mill, (d) service shops, (e) stable, (f) plantation village, (g) firewood, and (h) sand.

Trucks Nos. 411, 413, 417, 435, 438, 441, 485, 503, 503A and 518—Hauled in connection with the following operations of the plaintiff: (a) cane field, (b) irrigation, (c) mill, (d) service shops, (e) stable, (f) plantation village, (g) firewood, (h) sand, and (i) laboratory.

Trucks Nos. 407 and 418—Serviced tractors, caneloading machines, locomotive No. 8, concrete mixer, and air compressors.

Trucks Nos. 414 and 440—Used to spray herbicides along cane fields, field roads, storm ditches in cane fields, irrigation system, and plantation village dirt roads.

Trucks Nos. 421, 436 and 528—Hauled laboratory employees to and from their places of work on plantation; hauled equipment and supplies used in cane field operations to cane fields; hauled soil and cane samples from cane fields to laboratory.

Truck No. 423—From November 20, 1946, to April 27, 1947: Hauled in connection with cane field cultivation operations; from April 28, 1947, to September 14, 1947: Hauled in connection with all plantation operations.

Truck No. 452—Hauled in connection with all plantation operations.

Truck No. 453—Hauled in connection with cane field and irrigation operations.

Trucks Nos. 457, 470, 502, 506, 520, 523 and 529—Hauled in connection with cane field cultivation operations.

Truck No. 472—From November 20, 1946, to August 31, 1947: Hauled in connection with cane field and irrigation operations; from September 1, 1947, to September 14, 1947: Hauled in connection with the following operations of the plaintiff: (a) cane field, (b) irrigation, (c) mill, (d) service shops, (e) stable, (f) plantation village, (g) firewood, (h) sand, and (i) laboratory.

Truck No. 473—From November 20, 1946, to April 27, 1947: Hauled in connection with all plantation operations; from April 28, 1947, to September 14, 1947: Hauled in connection with the following operations of the plaintiff: (a) cane field, (b) irrigation, (c) mill, (d) service shops, (e) stable, (f) plantation village, (g) firewood, (h) sand, and (i) laboratory. [2189]

Truck No. 491—From November 20, 1946, to March 2, 1947: Hauled in connection with cane field cultivation operations; from March 3, 1947, to September 14, 1947: Hauled in connection with cane field and irrigation operations.

Truck No. 493—From November 20, 1946, to July 27, 1947: Hauled in connection with cane field operations and tractor repair shop operations; from July 28, 1947, to September 14, 1947: Hauled in connection with cane field and irrigation operations.

Truck No. 494—From November 20, 1946, to June 1, 1947: Hauled in connection with stable operations, macadamia nut grove operations, and plantation parks and playgrounds operations; from June 2, 1947, to July 27, 1947: Hauled in connection with cane field cultivation operations; from July 28, 1947, to September 14, 1947: Hauled in connection with cane field and irrigation operations.

Truck No. 527—Hauled in connection with the operations of mainline plantation railroad.

The concrete mixer and air compressors referred to in this finding were used in connection with construction work on the [2181] plantation.

Part IV

Conclusions of Law

From the foregoing Findings of Fact, the court states the following Conclusions of Law:

A. The court has jurisdiction of the cause and subject matter, and of the parties hereto.

B. Each and all of the defendants, during each of the work weeks covered by the within litigation, performed activities of such character and under such circumstances, as the findings show, that they were either engaged in commerce, or engaged in the production of goods for commerce, within the meaning of Section 3(j) of the Act.

C. The exemptions from the overtime requirements of the Act, as provided by Sections 7(c) and

13(a)(6), were applicable only to such defendants as the foregoing findings have set forth, and only to the extent found in said findings.

D. The exemption provided by Section 13(a)(2) was not applicable to any of the defendants during the period covered by this litigation.

E. On their counter-claim, cross-claim and cross-complaint, the defendants are severally entitled to have of and recover from plaintiff, as and for unpaid overtime compensation due them, the amounts set forth opposite their respective names in the following tabulation: [2182]

Maneja	$ 30.94
Lorenzo	None
Kibota	None
Asuncion	47.41
Hayashi	44.88
Okouchi (K)	77.02
Watanabe	71.50
Holmberg	100.93
Faria	144.91
Sera	97.97
Okouchi (T)	98.04
Hernandez	None
Dumlao	None
Kondo	None
Cumlat	None
Lazo	None
Kubo	None
Hamamoto	None
Oato	73.78

Carrit	87.68
Robello (S)	144.80
Claunan	125.96
Sunahara	143.34
Tanaka	111.04
Ezawa	163.96
Guigui	123.82
Reyher	174.12
Takata	136.02
Vierra	127.89
Sakai	133.12
Tsutsui	154.94
Kashiwabara	145.67
Mori	127.92
Hironaka	132.84
Robello (A)	85.40
Yamada	58.10
Crisostomo	137.54
Fernandez	28.88
Lee	None
Pacheco	127.11
Sakaguchi	None
Fujiwara	106.98

G. On their counter-claim, cross-claim and cross-complaint, each of the defendants shown above to be entitled to recover judgment against plaintiff, is entitled to an additional amount, as liquidated damages, equal to the amount set forth opposite his name in the foregoing tabulation.

H. On their counter-claim, cross-claim and cross-complaint, the defendants shown above to be entitled to recover judgment against plaintiff, are

entitled jointly to have of and recover from plaintiff the sum of $2,500.00 as and for attorneys' fees, and are entitled to costs. [2183]

1. It Is Ordered that the clerk shall enter judgment as above.

Dated this 3rd day of May, 1951.

/s/ DELBERT E. METZGER,
Judge.

[Endorsed]: Filed May 3, 1951. [2184]

[Title of District Court and Cause.]

ORDER GRANTING MOTION FOR ADDITIONAL FINDINGS

A motion having been filed by plaintiff requesting the Court to make additional findings herein, and the said motion having been presented to the Court, and the Court having been fully advised and defendants having consented to said motion, and good cause appearing for the granting of said motion pursuant to Rule 52(b) of the Rules of Civil Procedure for the District Courts of the United States,

It Is Hereby Ordered that the said motion be granted and the Court hereby makes the additional findings attached thereto.

Dated Honolulu, T. H., this 7th day of June, 1951.

/s/ DELBERT E. METZGER.,
Judge.

[Endorsed]: Filed June 13, 1951. [2185]

[Title of District Court and Cause.]

ADDITIONAL FINDINGS OF FACT

The Court hereby makes the following additional findings of fact:

38a. Augustine Lorenzo. This defendant was employed as a water supply ditchman, as more fully described below.

Weeks presenting no issue because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay pursuant to the collective bargaining contract: November 18, 25; December 23, 30; March 31; May 26; June 30; August 25; September 1.

In each of the remaining weeks covered by the litigation he worked overtime hours, for which he received only straight time pay, his work in each said week being as follows: he transmitted, as received from his supervisor, orders for the amount of irrigation water to be delivered to the plantation from reservoirs off the plantation for each work period; he was responsible for arranging diversion gates in the main plantation supply canal so as to distribute the water in proper proportion to various ditches on the plantation; he checked water measurement status to insure delivery of the proper amount of water into the plantation irrigation system; he was responsible for the proper maintenance of the irrigation canal system under his charge and for reporting immediately any major breaks or maintenance [2186] requirements to the

proper authorities at the plantation; he patrolled the ditch lines on the plantation under his custody to insure proper delivery of water throughout the workday; and during non-irrigation periods in each week he cleaned irrigation ditches and tunnels of the plantation irrigation system. In each week practically all of the water distributed by this defendant, and carried in the ditches, tunnels, and canal system which he serviced, was used to irrigate the plantation cane fields, but a minute proportion of such water was used as boiler water for locomotives used on the plantation railroad—exemption under Section 13(a) (6) applicable in each said week.

38b. Haru Kibota. This defendant was a steam pump orerator performing the work described more fully below. The pump which he operated was located on the plantation about two miles from the plantation buildings and yard area.

Weeks presenting no issue because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay pursuant to the collective bargaining contract: November 18, 25; December 23, 30; March 31; May 26; June 30; August 25; September 1.

In each of the remaining weeks covered by the litigation he worked overtime hours, for which he received only straight time pay, his work in each said week being as follows: he operated pump equipment to supply water, approximately 97% of which was for irrigation of cane fields and ap-

proximately 3% of which was for domestic use and other use in plantation villages; and he also made minor repairs to such pump equipment—exemption under Section 13(a) (6) applicable in each said week.

38c. Bernabe Hernandez. This Defendant worked in the mill as a cane cleaning plant employee. All his work as found below was performed at the mill.

Weeks presenting no issue, because he either worked no overtime hours, or worked overtime hours for all of which he received [2187] overtime pay pursuant to the collective bargaining contract: November 18, 24; December 23, 30; January 6; March 30; May 11, 26; June 1, 8, 29; July 13; August 24, 31.

Weeks in which he worked overtime hours, for which he received only straight time pay, his work in each said week being as set forth below:

> December 1, 8; February 10, 16, 23; March 3, 9, 16, 24; April 6, 14, 20, 27; May 4, 18; June 16, 22; July 7, 20, 28; August 3, 10, 18; September 8; he weighed incoming cane cars, noting the gross weight on the cane car ticket; cleaned any adhering cane from the cane car which had been dumped; and operated machinery at the cane cleaning plant, including machinery for moving incoming loaded cane cars into the cane cleaning plant, the cane car dumper, the empty cane car transfer, and machinery for moving empty cane cars out

of the cane cleaning plant—exemption under Section 7(c), but not under Section 13(a) (6), applicable in each said week.

Weeks in which he worked overtime hours for all of which he received overtime pay, but there is a controversy between the parties as to whether plaintiff was obligated under the Act to pay such overtime—the defendant's work in each said week being as set forth below:

January 13, 20, 27; February 3, each of which fell during the off season: he cleaned in and around the cane cleaning plant and made repairs to such plant and the mill carrier and also crushing plant equipment—Neither the Sections 13(a) (6) nor 7(c) exemptions apply in any of said weeks.

38d. Pedro Dumlao. This defendant worked in the mill as a cane cleaning plant employee. All of his work as found below was performed at the mill.

Weeks presenting no issue, because he either worked [2188] no overtime hours, or worked overtime hours for all of which he received overtime pay pursuant to the collective bargaining contract: November 18, 24; December 1, 23, 30; January 6; March 31; May 25; June 29; August 25, 31.

Weeks in which he worked overtime hours, for which he received only straight time pay, his work in each said week being as set forth below:

December 8, 15; February 9, 17, 23; March

2, 10, 16, 23; April 6, 13, 20, 27; May 4, 12, 18; June 2, 8, 15, 22; July 6, 13, 20, 27; August 3, 10, 17; September 7: he uncoupled loaded cane cars at the cane cleaning plant preparatory to unloading and collected cane car tickets showing variety of cane and time and field at which harvested, and cleaned up around unloading station; he coupled up empty cane cars at cane cleaning plant and cleaned empty cars after unloading and cleaned up around unloading switch; he acted as watchman on equipment in cane cleaning plant to keep such equipment from being jammed; and he removed stones and other material from equipment in cane cleaning plant and maintained such equipment full of cane—exemption under Section 7(c) but not under Section 13(a) (6), applicable in each said week.

Weeks in which he worked overtime hours for all of which he received overtime pay, but there is a controversy between the parties as to whether plaintiff was obligated under the Act to pay such overtime—the defendant's work in each said week being as set forth below:

January 13, 20, 27; February 3, each of which fell during the off season: he cleaned in and around the cane cleaning plant and made repairs to the cane cleaning plant and the mill carrier and also crushing plant equipment—Neither the Sections 13(a) (6) nor 7(c) [2189] exemptions apply in any of said weeks.

38e. Ushinosuke Kondo. This defendant worked in the mill as a crushing plant employee. All of his work as found below was performed at the mill.

Weeks presenting no issue because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay pursuant to the collective bargaining contract: November 18, 24; December 23, 30; January 13; February 16; March 30; May 26; June 29; August 24; September 1.

Weeks in which he worked overtime hours, for which he received only straight time pay, his work in each said week being as set forth below:

> December 1, 8; February 10, 23; March 3, 9, 16, 24; April 6, 14, 20, 27; May 5, 11, 18; June 1, 8, 16, 22; July 7, 13, 20, 28; August 3, 10, 18; September 8: he maintained the flow of cane through the crushing mills in the crushing plant by regulating the speed of the driving engines; and he regulated the intake or flow of water used to wash out the last removable sugar in the cane fiber, such water being added to the cane blanket before it passed through the last crushing mill—exemption under Section 7(c), but not under Section 13(a) (6), applicable in each said week.

Weeks in which he worked overtime hours for all of which he received overtime pay, but there is a controversy between the parties as to whether

plaintiff was obligated under the Act to pay such overtime—the defendant's work in each said week being as set forth below:

> January 6, 20, 27; February 3, each of which fell during the off season: he cleaned and made repairs to crushing plant equipment and also the cane cleaning plant and the mill carrier—Neither the Sections 13(a) (6) nor 7(c) exemptions apply in any of said weeks.

38f. Simon Cumlat. This defendant worked in the mill as a high [2190] grade centrifugal operator operating machinery for crystallizing sugar. All of his work as found below was performed at the mill.

Weeks presenting no issue because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay pursuant to the collective bargaining contract: November 18, 24: December 23, 30; February 23; March 24, 30; May 26; June 29; July 7; August 24, 31.

Weeks in which he worked overtime hours for which he received only straight time pay, his work in each said week being as set forth below:

> December 2, 8, 15; February 10, 16; March 3, 10, 16; April 6, 14, 20 27; May 5, 11, 18; June 1, 8, 16, 22; July 13, 20, 28; August 3, 10, 18; September 8: he operated machinery in the boiling house for crystallizing sugar—exemption under Section 7(c), but not under Section 13(a) (6), applicable in each said week.

Weeks in which he worked overtime hours for all of which he received overtime pay, but there is a controversy between the parties as to whether plaintiff was obligated under the Act to pay such overtime—the defendant's work in each said week being as set forth below:

> January 6, 13, 20, 27; February 3, each of which fell during the off season: he cleaned and repaired boiling house equipment—Neither the Sections 13(a) (6) nor 7(c) exemptions apply in any of said weeks.

38g. Apolonio Lazo. This defendant worked in the mill as a low grade centrifugal operator operating machinery for crystallizing sugar. All of his work as found below was performed at the mill.

Weeks presenting no issue because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay pursuant to the collective bargaining contract: November 18, 24; December 2, 23, 30; January 27; March 2, 30; May 25; June 8, 30; July 6; August 24; September 1. [2191]

Weeks in which he worked overtime hours, for which he received only straight time pay, his work in each said week being as set forth below:

> December 8, 16; February 9, 16, 24; March 9, 17, 23; April 7, 13, 20, 28; May 4, 11, 19; June 1, 15, 22; July 13, 21, 27; August 3, 11, 17; September 7: he operated machinery in the boiling house for crystallizing sugar—exemp-

tion under Section 7(c), but not under Section 13(a) (6), applicable in each said week.

Weeks in which he worked overtime hours for all of which he received overtime pay, but there is a controversy between the parties as to whether plaintiff was obligated under the Act to pay such overtime—the defendant's work in each said week being as set forth below:

January 6, 13, 20; February 3, each of which fell during the off season: he cleaned and repaired boiling house equipment—Neither the Sections 13(a) (6) nor 7(c) exemptions apply in any of said weeks.

38h. Teruichi Kubo. This defendant worked in the mill as a boiling house employee. All of his work as found below was performed at the mill.

Weeks presenting no issue because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay pursuant to the collective bargaining contract: November 18, 24; December 23, 30; March 31; May 25; June 29; August 25, 31.

Weeks in which he worked overtime hours, for which he received only straight time pay, his work in each said week being as set forth below:

December 1, 8, 15; February 9, 17, 23; March 2, 10, 16, 23; April 6, 13, 21, 27; May 4, 12, 18; June 2, 8, 15, 23; July 6, 14, 20, 27; August 4, 10, 17; September 7: **[2192]** he boiled low-grade massecuites (returned molasses and small

grain crystal seed from high-grade process) until crystallization had taken place, and the proper grain size was obtained, and he checked on the boiling of the mother liquor—exemption under Section 7(c), but not under Section 13(a)(6), applicable in each said week.

Weeks in which he worked overtime hours for all of which he received overtime pay, but there is a controversy between the parties as to whether plaintiff was obligated under the Act to pay such overtime—the defendant's work in each said week being as set forth below:

January 6, 13, 20 27; February 3, each of which fell during the off season: he cleaned and made repairs to boiling house equipment—Neither the Sections 13(a)(6) nor 7(c) exemptions apply in any of said weeks.

38i. Giichi Hamamoto. This defendant worked in the mill, principally as a bagger and loader of sugar. All of his work as found below was performed at the mill.

Weeks presenting no issue because he either worked no overtime hours, or worked overtime hours for all of which he received overtime pay pursuant to the collective bargaining contract: November 18, 25; December 2, 9, 16, 23, 30; January 6; March 31; May 26; June 30; August 25; September 1.

Weeks in which he worked overtime hours, for which he received only straight time pay, his work

in each said week consisting of one or more of the activities set forth below:

> February 10, 16, 24; March 2, 9, 17, 24; April 6, 14, 20, 28; May 5, 11, 19; June 1, 9, 16, 22; July 7, 13, 21, 28; August 3, 11, 18; September 8; he filled sugar bags with sugar, sewed the filled bags and loaded the bagged sugar into box cars or into sugar warehouse; he loaded sugar from the sugar warehouse in which it had been temporarily stored into box cars; he assisted in various [2193] operations in the boiling house; and he cleaned and made repairs to boiling house equipment—exemption under Section 7(e), but not under Section 13(a) (6), applicable in each said week.

Weeks in which he worked overtime hours for all of which he received overtime pay, but there is a controversy between the parties as to whether plaintiff was obligated under the Act to pay such overtime—the defendant's work in each said week being set forth below:

> January 13, 20, 27; February 3, each of which fell during the off season: he made repairs to boiling house equipment—Neither the Sections 13(a) (6) nor 7(e) exemptions apply in any of said weeks.

38j. Yack Chun Lee. This defendant was employed as a warehouse employee to perform the work described more fully below.

Weeks presenting no issue because he worked no overtime hours: November 18, 25; December 23 30; March 31; May 26; June 30; August 25; September 1.

In each of the remaining workweeks covered by the litigation this defendant worked overtime hours, for all of which he received overtime pay, but there is a controversy between the parties as to whether plaintiff was obligated under the Act to pay such overtime—the defendant's work in each said week being as follows: he was a warehous employee and in this connection he checked and kept records of incoming materials and supplies; he kept records of warehouse inventories; he checked out materials and supplies to mill, field, and shops; he prepared order lists for new materials and supplies; and he acted as assistant to the warehouse superintendent —Neither the Sections 13(a) (6) nor 7(c) exemptions apply in any of said weeks.

38k. Eiko Sakaguchi. This defendant was employed as a clerk-stenographer, as more fully described below. [2194]

In all weeks, except those stated below, no issue is presented because she either worked no overtime hours, or worked overtime hours for all of which she received overtime pay pursuant to the collective bargaining contract.

The only weeks affected by the controversy in this action—being weeks in which defendant worked overtime hours, for all of which she received over-

time pay, but there is a controversy between the parties as to whether plaintiff was obligated under the Act to pay such overtime—are April 28, June 23, and July 7, in each of which her work was as follows: she kept records of construction work performed on dwellings in plantation villages; kept the time of all employees in the housing department; made monthly records for the department; assisted in receiving and accounting for cash received and in maintaining accounting records; and performed general office work. The said housing department had supervision during said weeks over the paint shop and the plumbing shop and over carpenters engaged in work on dwellings in plantation villages—Neither the Sections 13(a) (6) nor 7(c) exemptions apply in any of said weeks.

Dated this 7th day of June, 1951.

/s/ DELBERT E. METZGER,
Judge.

[Endorsed]: Filed June 13, 1951. [2195]

In the United States District Court
for the Territory of Hawaii

Civil No. 787

WAIALUA AGRICULTURAL COMPANY, LTD.,

Plaintiff and
Cross-Defendant,

vs.

CIRACO MANEJA, et al.,

Defendants and
Cross-Claimants.

DECLARATORY JUDGMENT AND JUDGMENT AWARDING DEFENDANTS OVERTIME COMPENSATION, LIQUIDATED DAMAGES, COSTS, AND ATTORNEY'S FEES

The above cause having come on for hearing on Aug. 30, 31 & Sept. 1, 1950, the parties being represented in court by their respective counsel, and evidence, both oral and documentary, having been introduced, and the court, after the filing of briefs and proposed findings of fact on behalf of the respective parties, having on May 3, 1951, rendered its "Opinion and Decision of Court Containing Findings of Fact and Conclusions of Law" herein.

Now Therefore, It Is Hereby Adjudged, Decreed, and Declared as follows:

Part I.

Declaratory Judgment

A. Definitions of Terms Herein.

The word "week" as used hereinafter refers to the particular defendant's workweek, and each workweek is identified by the date on which it commenced. All subsequent references to the months of November and December refer to those months in the year 1946, and all references to the months of January to September, inclusive, refer to such months in the year 1947. The "exemption of Section 13 (a)(6)" means the exemption from Section 7(a) of the Fair Labor Standards Act of 1938 (hereinafter called the Act) provided by Section 13(a)(6) thereof. The "exemption of Section 7(c)" means the exemption from said Section 7(a) provided by Section 7(c) of the Act.

B. Commerce Coverage.

Each and every defendant was engaged in commerce or in the production of goods for commerce within the meaning of Section 7(a) of the Act in each week during the period from November 20, 1946, to and including September 14, 1947.

C. Exemptions.

Sections 13(a)(6) and 7(c) of the Act.

1. Ciraco Maneja.

a. In each of the following weeks this defendant came within [2197] the exemption of Section 13(a)(6): March 24; April 14; May 19; June 2, 9,

15, 23; July 6, 14, 21, 28; August 4, 10, 18; September 7.

b. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 9, 16; January 6, 13, 27; February 10, 24; March 3, 10; May 12.[1]

2. Cornelio Asuncion.

a. In each of the following weeks this defendant came within the exemption of Section 13(a)(6): March 10, 24; April 7, 14, 21, 28; June 2, 9, 16, 23; July 7, 14, 21; August 4, 11, 18; September 8.

b. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 9; January 13, 20, 27; February 10, 17; March 3, 17; May 5, 12, 19.

3. Tsuruo Hayashi.

a. In each of the following weeks this defendant came within the exemption of Section 13(a)(6):

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[1]The weeks listed for each defendant are the only weeks affected by the controversy in this action as to said defendant.

The work performed by defendant Maneja and by each and every other defendant in each week of the period November 20, 1946, to and including September 14, 1947, is set forth in detail in the "Opinion and Decision of Court Containing Findings of Fact and Conclusions of Law" of the Court rendered on May 3, 1951, and in the additional findings of the Court heretofore ordered entered herein.

February 17; March 3, 24; April 14, 21, 28; May 5, 12; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

b. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 16; January 6, 13, 20, 27; February 3, 10, 24; March 10; April 7; May 19. [2198]

4. Koichi Okouchi.

a. In each of the following weeks this defendant came within the exemption of Section 13(a)(6): March 3; April 28; May 5; June 2, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

b. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 10, 17, 24; April 7, 21; May 12, 19; June. 9.

5. Tadao Watanabe.

a. In each of the following weeks this defendant came within the exemption of Section 13(a)(6): February 10; March 24; April 14; May 5; June 2, 9, 16, 23; July 7, 14, 28; August 4, 11, 18.

b. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 9, 16; January 6, 13, 20, 27; February 3, 17, 24; March 3, 10, 17; April 7, 21, 28; May 12, 19; July 21; September 8.

6. Augustine Lorenzo.

In each of the following weeks this defendant came within the exemption of Section 13(a)(6): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

7. Haru Kibota.

In each of the following weeks this defendant came within the exemption of Section 13(a)(6): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

8. Peter Holmberg.

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9; February 10, 16, 23; March 3, 17, 23; April 21, 27; May 4, 12; June 1, 8, 16; July 6, 13, 21; August 4, 17; September 8. [2199]

9. Barney Faria.

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

10. Hatsusuke Sera.

In each of the folowing weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 14, 21, 28; May 5, 12, 19; June 2, 9, 16; July 21, 28; August 4, 11, 18; September 8.

11. Takumi Okouchi.

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9 16; January 13, 20, 27; February 3, 10, 17, 24; March 2, 10, 24; April 7, 14, 20, 28; May 4, 12, 18; June 1, 9, 15, 23; July 7, 13, 21, 27; August 4, 10, 18, 24; September 7.

12. Bernabe Hernandez.

a. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6): December 1, 8; February 10, 16, 23; March 3, 9, 16, 24; April 6, 14, 20, 27; May 4, 18; June 16, 22; July 7, 20, 28; August 3, 10, 18; September 8.

b. In each of the weeks listed in "a" above this defendant came within the exemption of Section 7(c).

c. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): January 13, 20, 27; February 3.

13. Pedro Dumlao.

a. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6): December 8, 15; February 9, 17, 23; March 2, 10, 16, 23; April 6, 13, 20, 27; May 4, 12, 18; June 2, 8, 15, 22; July 6, 13, 20, 27; August 3, 10, 17; September 7.

b. In each of the weeks listed in "a" above this defendant came within the exemption of Section 7(c). [2200]

c. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): January 13, 20, 27; February 3.

14. Ushinosuke Kondo.

a. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6): December 1, 8; February 10, 23; March 3, 9, 16, 24; April 6, 14, 20, 27; May 5, 11, 18; June 1, 8, 16, 22; July 7, 13, 20, 28; August 3, 10, 18; September 8.

b. In each of the weeks listed in "a" above this defendant came within the exemption of Section 7(c).

c. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): January 6, 20, 27; February 3.

15. Simon Cumlat.

a. In each of the following weeks this defendant did not come within the exemption of Section

13(a)(6): December 2, 8, 15; February 10, 16; March 3, 10, 16; April 6, 14, 20, 27; May 5, 11, 18; June 1, 8, 16, 22; July 13, 20, 28; August 3, 10, 18; September 8.

b. In each of the weeks listed in "a" above this defendant came within the exemption of Section 7(c).

c. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): January 6, 13, 20, 27; February 3.

16. Apolonio Lazo.

a. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6): December 8, 16; February 9, 16, 24; March 9, 17, 23; April 7, 13, 20, 28; May 4, 11, 19; June 1, 15, 22; July 13, 21, 27; August 3, 11, 17; September 7.

b. In each of the weeks listed in "a" above this defendant came within the exemption of Section 7(c).

c. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): January 6, 13, 20; February 3. [2201]

17. Tetuichi Kubo.

a. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6): December 1, 8, 15; February 9, 17, 23; March 2, 10, 16, 23; April 6, 13, 21, 27; May 4, 12, 18; June 2, 8, 15, 23; July 6, 14, 20, 27; August 4, 10, 17; September 7.

b. In each of the weeks listed in "a" above this defendant came within the exemption of Section 7(c).

c. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): January 6, 13, 20, 27; February 3.

18. Giichi Hamamoto.

a. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6): February 10, 16, 24; March 2, 9, 17, 24; April 6, 14, 20, 28; May 5, 11, 19; June 1, 9, 16, 22; July 7, 13, 21, 28; August 3, 11, 18; September 8.

b. In each of the weeks listed in "a" above this defendant came within the exemption of Section 7(c).

c. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): January 13, 20, 27; February 3.

19. Masaiki Oato.

a. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6): December 1, 9; February 9, 17.

b. In each of the weeks listed in "a" above this defendant came within the exemption of Section 7(c).

c. In each of the following weeks this defendant did not come within the exemption of Section

13(a)(6) or the exemption of Section 7(c): January 6, 13, 20, 27; February 24; March 2, 9, 17, 24; April 6, 14, 21, 28; May 5, 12; June 2, 9, 16, 23; July 14, 21, 28; August 4, 11, 18; September 8.

20. Dionicio Carrit.

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section [2202] 7(c): December 1, 8; January 6, 13, 20, 27; February 3, 9, 16; March 2, 9, 16, 23; April 6, 13, 20, 27; May 4, 11, 18; June 1, 8, 15, 22; July 13, 20, 27; August 3, 10, 17; September 7.

21. Seraphine Robello.

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 1, 8, 15; January 6, 13, 20, 27; February 3, 10, 16, 23; March 24; April 6, 14, 20, 27; May 5, 11, 19; June 1, 8, 16, 22; July 7, 20; August 3, 10, 18; September 8.

22. Damaso Clauman.

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 10, 17, 24; March 3, 10, 17, 24; April 21, 28; May 5, 19; June 9, 16, 23; July 7, 14, 28; August 4, 11; September 8.

23. Fumio Sunahara.

In each of the following weeks this defendant

did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

24. Toshio Tanaka.

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2; January 6, 13, 20, 27; February 3, 10, 17; March 3, 10, 17, 24; April 7, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21; August 11, 18; September 8.

25. Masaru Ezawa.

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 21, 28; August 4, 11, 18; September 8. [2203]

26. Domingo Guigui

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 8, 16; January 5, 13, 19, 27; February 2, 10, 16, 24; March 9, 17, 23; April 7, 13, 20, 28; May 4, 11, 19; June 1, 9, 15; July 6, 13, 21, 27; August 3, 11, 17; September 7.

27. Alfred Reyher

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

28. Hirosaku Takata

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c); December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

29. Antone Vierra

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

30. Jiro Sakai

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12,

19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

31. Yukishige Tsutsui

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section [2204] 7(c). December 2, 9, 16; January 6, 13, 20, 27; February 3, 17, 24; March 3, 10, 17, 24; April 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

32. Toshio Kashiwabara

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 9, 16, 23; July 7, 14, 21, 28; August 4; September 8.

33. Edwin Mori

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16; July 14, 21, 28; August 4, 11, 18; September 8.

34. Genjiro Hironaka

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9,

16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21; May 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 18.

35. Antone Robello

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9; January 6, 13, 20, 27; February 3, 10, 24; March 3, 10, 17; April 7, 14, 21, 28; May 5; June 2, 16, 23; July 7, 14, 21, 28; August 18.

36. Yoshiji Yamada

a. In the following week this defendant came within the exemption of Section 13(a)(6): January 13.

b. In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9; January 6, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24. [2205]

37. Roque Crisostomo

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

38. Moses Fernandez

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6)

or the exemption of Section 7(c): December 16; January 20; February 17, 24; March 10, 17; April 14, 21; May 12, 19; June 16.

39. Yack Chun Lee

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

40. Louis Pacheco

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8.

41. Eiko Sakaguchi

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): April 28; June 23; July 7.

42. Margaret Fujiwara

In each of the following weeks this defendant did not come within the exemption of Section 13(a)(6) or the exemption of Section 7(c): December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12,

19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4; September 8. [2206]

Section 13(a)(2) of Act

None of the defendants came within the exemption from the provisions of Section 7(a) of the Act provided by Section 13(a)(2) thereof in any week during the period from November 20, 1946, to and including September 14, 1947.

D. Commingled Work.

In any week in which any defendant performed some work which came within the exemption of Section 13(a)(6) or the exemption of Section 7(c) and also some work which was not so exempt, said defendant was not exempt for that week from the provisions of Section 7(a) of the Act by virtue of either Section 13(a)(6) or Section 7(c). This principle has been reflected in determining the exemptions above set forth in paragraph C.

PART II.

Judgment Awarding Defendants Overtime Compensation, Liquidated Damages, Costs, and Attorneys' Fees

A. Award of Overtime Compensation

Plaintiff shall pay to each defendant as and for unpaid overtime compensation due said defendant under the Act the amount set opposite his name in the following tabulation:

Maneja	$ 30.94
Lorenzo	None
Kibota	None
Asuncion	47.41
Hayashi	44.88
Okouchi (K)	77.02
Watanabe	71.50
Holmberg	100.93
Faria	144.91
Sera	97.97
Okouchi (T)	98.04
Hernandez	None
Dumlao	None
Kondo	None
Cumlat	None
Lazo	None
Kubo	None
Hamamoto	None
Oato	73.78
Carrit	87.68
Robello (S)	144.80
Claunan	125.96
Sunahara	143.34
Tanaka	111.04
Ezawa	163.96
Guigui	123.82
Reyher	174.12
Takata	136.02
Vierra	127.89
Sakai	133.12
Tsutsui	154.94
Kashiwabara	145.67

Mori	127.92
Hironaka	132.84
Robello (A)	85.40
Yamada	58.10
Crisostomo	137.54
Fernandez	28.88
Lee	None
Pacheco	127.11
Sakaguchi	None
Fujiwara	106.98

B. Award of Liquidated Damages

Plaintiff shall pay to each defendant an additional amount, as liquidated damages due under the Act, equal to the amount set forth opposite said defendant's name in the above tabulation.

C. Award of Attorneys' Fee

Plaintiff shall pay to defendants jointly the sum of $2,500 as and for an attorney's fee.

D. Award of Costs

Plaintiff shall pay the costs of this action.

Dated June 8th, 1951.

The Court hereby approves the form of the foregoing final judgment and directs that it be entered.

/s/ DELBERT E. METZGER,
Judge.

[Endorsed]: Filed June 13, 1951. [2208]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Waialua Agricultural Company, Limited, plaintiff above named, hereby appeals to the Court of Appeals for the 9th Circuit from the following portions of the final judgment entered in this action on June 13, 1951:

A. Part I, paragraph B, paragraphs C1.b, C2.b, C3.b, C4.b, C5.b, C8-C11, inclusive; C12.a and c, C13.a and c, C14.a and c, C15.a and c, C16.a and c, C17.a and c, C18.a and c, C19.a and c, C20-C35, inclusive; C36.b, C37-C42, inclusive, and paragraph D.

B. All of Part II, paragraphs A, B, C, and D.

Dated: Honolulu, T. H., July 11, 1951.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
/s/ MILTON C. DENBO,
/s/ ERNEST C. MOORE, JR.,
Attorneys for Plaintiff.

[Endorsed]: Filed July 11, 1951. [2209]

[Title of District Court and Cause.]

STIPULATION AS TO ORIGINAL PAPERS IN FILE TO BE TRANSMITTED TO APPELLATE COURT

It is hereby stipulated by the attorneys for the parties hereto, pursuant to Rule 75(o) of the Federal Rules of Civil Procedure and Rule 11 of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, that in connection with the appeal herein, only the following original papers in the file dealing with this action shall be transmitted to the appellate court and all the other original papers shall be omitted:

1. Order to Drop Certain Parties Defendant—filed August 21, 1950.

2. Order to Drop Certain Parties Defendant and to Eliminate Class Representation Aspects—filed August 21, 1950.

3. Order Setting Aside Prior Order Granting Separate Trial of Certain Issues—filed August 21, 1950.

4. Amended Complaint—filed August 21, 1950, and U. S. Marshal's Return dated August 22, 1950 (attached to the Amended Complaint).

5. Answer to Amended Complaint, and Counter-Claim, Cross-Claim, and Cross-Complaint—filed August 23, 1950.

6. Reply and Answer to Counter-Claim, Cross-Claim, and Cross-Complaint—filed August 25, 1950.

7. Amendment to Answer to Amended Complaint, and Counter-Claim, Cross-Claim, and Cross-Complaint—filed August 30, 1950. [2217]

8. Consent and Authorization to Become and Be a Party to Litigation—filed August 30, 1950.

9. Stipulation, together with attached Exhibits A, B, C, D, E, F, G, H, and I—filed August 30, 1950.

10. Transcript of Proceedings in Subject Action Held in Above Named Court on August 30 and 31 and September 1, 1950; and Plaintiff's Exhibits numbered A, B, and C, respectively, and Defendants' Exhibits numbered 1, 2, 3A, and 3B, respectively, introduced in evidence in such proceedings.

11. Amendment to Stipulation—filed September 5, 1950.

12. Amendment to Amended Complaint—filed October 2, 1950.

13. Motion to Reopen Record and Order Reopening Record—filed October 2, 1950.

14. Second Amendment to Stipulation—filed October 2, 1950.

15. Opinion and Decision of District Court Containing Findings of Fact and Conclusions of Law (including the direction for entry of judgment thereon)—filed May 3, 1951.

16. Order Granting Motion for Additional Findings—filed June 13, 1951.

17. Additional Findings of Fact—filed June 13, 1951.

18. Declaratory Judgment and Judgment Awarding Defendants Overtime Compensation, Liquidated Damages, Costs, and Attorney's Fees—filed June 13, 1951.

19. Notice of Appeal—filed July 11, 1951.

20. Supersedeas Bond—filed August 2, 1951.

21. Order Extending Time to File Record on Appeal and to Docket Appeal—filed August 13, 1951.

22. Order Extending Time to File Record on Appeal and to Docket Apppeal—filed September 4, 1951. [2218]

23. This Stipulation as to Original Papers in File to Be Transmitted to Appellate Court—filed September 18, 1951.

Dated Honolulu, T. H., 18th day of September, 1951.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
/s/ MILTON C. DENBO,
/s/ ERNEST C. MOORE, JR.,
Attorneys for Plaintiff.

/s/ RICHARD GLADSTEIN,
Attorney for Defendants.

[Endorsed]: Filed September 18, 1951. [2219]

In the United States District Court for the Territory of Hawaii

Civil No. 787

WAIALUA AGRICULTURAL COMPANY, LTD.,

Plaintiff,

vs.

CIRACO MANEJA, et al.,

Defendant.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S. District Court, Honolulu, T. H., on August 30, 1950,

Before Hon. Delbert E. Metzger, Judge.

Appearances:

RUFUS G. POOLE, ESQ.,
Washington, D. C.,
Appearing for Plaintiff;

ERNEST C. MOORE, ESQ., of
PRATT, TAVARES & CASSIDY,
Appearing for Plaintiff;

LIVINGSTON JENKS, ESQ., of
ANDERSON, WRENN & JENKS,
Appearing for Plaintiff;

RICHARD GLADSTEIN, ESQ., of
GLADSTEIN, ANDERSEN, RESNER & LEONARD,
Appearing for Defendant.

PROCEEDINGS

The Clerk: Civil No. 787, Waialua Agricultural Company, Limited, Plaintiff, versus Ciraco Maneja, et al., Defendants, for trial.

The Court: All the parties are ready?

Mr. Gladstein: Yes.

Mr. Poole: We are ready.

Mr. Gladstein: Mr. Poole, will you yield for a moment?

Mr. Poole: I shall.

Mr. Gladstein: Your Honor, before Mr. Poole commences as to the Plaintiff, which is his right to do, I would like to call the attention of the Court to the fact that this morning I filed a pleading designated "Amendment to Answer to Amended Complaint and Counter-Claim, Cross-Claim and Cross-Complaint." Heretofore I had filed an answer to the Complaint and also a Counter-Claim, Cross-Claim and Cross-Complaint, to which the Plaintiff filed a reply or answer. I now desire to file and have filed this morning an amendment to my pleading, and this is done with the consent of the other side, as shown on the document, and I would like it to be pursuant to the order of the Court and with the approval of the Court, if I may.

I understand also that the Plaintiff is prepared to admit the allegations contained in this pleading entitled "Amendment to Answer to Amended Complaint and Counter-Claim, Cross-Claim and Cross-Complaint." Am I right, Mr. Poole?

Mr. Poole: That is correct, your Honor. We do

admit all the material allegations which this pleading contains.

The Court: Well, just as briefly as you can, outline to me what is covered by this.

Mr. Gladstein: The purport of this amendment, your Honor, in substance is this: It refers back to allegations contained in my Cross-Complaint, allegations dealing with the work days, duties, functions and activities performed by the Defendants in Cross-Complaint; and it specifies in greater detail the nature of those activities so as to show that they are clearly compensable within the meaning of the Fair Labor Standards Act. And, in other words, by allegations of fact this amendment rebuts any notion that we are seeking a recovery for so-called portal to portal activities. In other words, the work that is involved here for which we seek overtime is compensable work for which the plantations agree that they should pay—I should say the Waialua Company agrees that it should pay and which in fact it did pay for. And the controversy between us is essentially as to whether they have paid enough. In other words, whether they were supposed to pay overtime for the hours between 40 and 48 in each work week.

The Court: Very well.

Mr. Gladstein: May the record, then, show the Court's order permitting the filing of this document, your Honor? [2*]

The Court: Yes.

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* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Poole: Your Honor, in view of the pre-trial conference in this case which was held last Friday, August 25th, when the issues of the case were rather fully discussed and the contentions of the parties explained, and in view of the further fact that this case was tried before the Court some three years ago, it seems to Counsel to the Plaintiff that it would be unnecessary and probably unjustified to impose on the Court at this time with an opening statement explaining the case and going into those issues.

The Court: I think that is true, unless some new matters have come up that might be dealt with in an explanation. I have in mind new matters that may have arisen by reason of the case having been before the 9th Circuit Court and sent back here for what other further action may be taken. Is there anything new arising in that situation?

Mr. Poole: Your Honor, I don't think so. I think that it was recognized by the parties in the pre-trial conference last Friday that the case was remanded for three purposes, and I think I stated them then for the record, and I shall do so again. First, to permit the entry of detailed findings as to each defendant; second, to enlarge the record of the case, if the present record is not adequate to support the detailed findings that were ordered by the 9th Circuit; and third, for the entry of a judgment which would declare the [3] rights of the employee defendants individually for each work week of the period covered by the action.

Now, as I stated at the pre-trial conference, I don't think that there is any question on the part of the attorneys for the Plaintiff that the record as it stood and now stands with respect to the first trial is inadequate to support the type of findings which the 9th Circuit appeared to think was necessary.

The Court: How many defendants are named here in addition to Ciraco Maneja?

Mr. Poole: 41.

The Court: 41?

Mr. Poole: So there is a total of 42 defendants, and they are all employees of Waialua Agricultural Company.

The Court: And each of those does represent a class of employment?

Mr. Poole: Your Honor, I want to make it very clear to you and for the record that these individual employee defendants are being sued by the Plaintiff in their individual capacities only and not as representatives of any class, as they stand just as individual employees, and there is no importance to be attached by virtue of the fact that these particular employees rather than other employees are being sued.

Mr. Gladstein: And I may say, your Honor, in further elaboration of Mr. Poole's statement, that the Cross-Claims [4] that are being made are being made specifically and explicitly for these 42 Defendants and cross-defendants and for no others.

The Court: Yes, I get that. So that the class features are entirely out.

Mr. Poole: They are.

The Court: So far as the court proceedings are concerned, so far as this case is concerned.

Mr. Poole: That's correct. In the first action the employees were suing not only in their individual capacities but as representatives of a class of employees similarly situated. That aspect of the case has been dropped pursuant to an order which your Honor issued.

The Court: All right.

Mr. Poole: Now, I might also add that now that we are talking about the parties that in the first action, rather in this action before the remand, Mr. Jack Hall, international representative of the I.L.W.U. and Locals 145 to 147, I.L.W.U., that were made party defendants—they have also been eliminated as parties. So that in the case today there are only 42 employee defendants.

My colleague calls my attention to the fact that there were also dropped from the case six employee defendants that were in the case when it was tried the first time. They were dropped as a result of an order which was issued. I am not going to undertake to read their names for the record because [5] they will be shown by the order which you signed.

The Court: Yes.

Mr. Poole: And they were dropped because of the reasons which we explained in the pre-trial conference. There had been changes in status and deaths and other reasons why it appeared that they should be taken out of the case.

If there are no further questions from your Honor, I shall proceed.

The Court: No, I have no questions.

Mr. Poole: Now, as we indicated in the pre-trial conference, the parties to this action have agreed to the facts, the facts relating to all issues and claims arising in this action. This agreed statement of facts, stipulation of facts, I wish now to present to the Court. And I will say to your Honor that the Plaintiffs do so with apologies to the Court because of its great length. It contains 771 pages and the original I think weighs about six and one-half pounds. How, as we offer it we call attention to the mandate of the 9th Circuit in remanding the case for further proceedings. We think that the mandate made it clear that the record in the case should contain facts showing the precise activities in which the employee defendants were engaged each work week, and also the number of hours that each defendant worked each work week. And last, both the straight time and overtime compensation that was paid each work week. [6]

Now, because of the ever-changing activities which were engaged in by the employees, you get a factual picture which varies in most work weeks, not in all but in many with respect to the 42 employee defendants that we have here. And that explains the great length of the stipulation. Now, this stipulation——

The Court: How many pages you say to that stipulation?

Mr. Poole: 771 exclusive of the exhibits. And the exhibits are in the form of charts and other material and I really don't know how many pages they run.

The Court: Yes.

Mr. Poole: Now, the signatures of the attorneys for the parties appear on page 771, and I'd like to read for the record the fact that Richard Gladstein has signed as attorney for the defendants, and that Rufus G. Poole, Livingston Jenks and Ernest C. Moore, Jr., have signed as attorneys for Waialua Agricultural Company, Limited, Plaintiff. [7]

* * *

You will recall that this action is one for a declaratory judgment. In the answer that was filed by the Defendants they sought or set forth a Counter-Claim. Now, the issues in the declaratory judgment action in the Counter-Claim we think are substantially the same as we pointed out in the pre-trial conference. But what I wanted to say today for the record was this:

This stipulation of facts, agreed statement of facts, is being offered or being presented rather to the Court now as the facts to an action necessary to the decision and [9] determination of all issues which arise both under the declaratory judgment action and also the Counter-Claim. Furthermore——

The Court: Well, before we didn't reach the Counter-Claim. But now you are telling me that it is all involved here now?

Mr. Poole: That's right. That's correct. Now,

I think we should also point out that this stipulation is virtually identical so far as part one is concerned with the first stipulation and part one of that document. The balance of it is additional material. And that relates to the necessities of the mandate of the 9th Circuit Court which required a showing with respect to the activities of the employees each work week and the hours of work. But in presenting this stipulation we present it as the true and accurate facts in the case, and in substitution for any prior evidence that has been taken in this case, including the stipulation which was filed in 1947.

Now, the Plaintiff rests its case on the facts agreed to by the parties in the stipulation and admitted in the pleadings, but we reserve the right to call rebuttal witnesses after the witnesses for the Defendants have been heard. We do, however, have some testimony that we want to put on this morning which we submit will show the records and the other information on which this stipulation of facts was based. And I should like to turn over the trial to my colleague Mr. Jenks. [10]

The Court: The stipulation may be filed.

Mr. Jenks: How is that marked?

The Clerk: It goes in the pleadings.

Mr. Jenks: We can have our copies stamped to show that.

The Court: How is it marked?

The Clerk: I said to him it will be in the pleadings.

RAYMOND JOHN O'DONNELL

a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

Mr. Jenks: Your Honor, I am going to ask this witness to give some testimony relating to the detailed facts in the stipulation having to do with two of the employees, and for simplicity of handling I have prepared copies of the pages for your Honor to look at. You will see that this is beginning with 627 and this one is beginning with 472.

The Court: Yes.

Direct Examination

By Mr. Jenks:

Q. Will you state your full name, please?

A. Raymond John O'Donnell.

Q. And where do you reside, Mr. O'Donnell?

A. In Waialua, Oahu, Territory of Hawaii.

Q. And what is your employment?

A. I am the office manager of the Waialua Agricultural [11] Company, Limited.

Q. How long have you been employed by Waialua Agricultural Company? A. 24 years.

Q. And how long have you been the office manager? A. Two years. This is the third year.

Q. What was your work in the office before you became office manager?

A. I was assistant office manager from 1933 up until the time of my employment as office manager.

Q. Then you were the assistant office manager in 1946 and 1947? A. I was.

(Testimony of Raymond John O'Donnell.)

Q. Now, as office manager, are you acquainted with the books and records of Waialua?

A. I am.

Q. More particularly, are you acquainted with the records of Waialua relating to its employees and the work done by its employees and the compensation paid to them?

A. All of that work is done under my direct supervision.

Q. Are you acquainted with Barney Faria?

A. I am.

Q. What is his position?

A. He is a mechanic attached to the machine shop engaged exclusively in the repairs to locomotives. [12]

Q. And he had that job also in 1946 and '47?

A. He did.

Q. I hand you a sheaf of documents covering daily dates from November 20, 1946, to December 14, 1946, and ask you what those are?

The Court: November——

Mr. Jenks: It covers the first four weeks, this work week, November 18 to 14, and these—(indicating on documents).

The Court: You begin with 20?

Mr. Jenks: The fact is that he did not work on the first two days of that first work week. There was a strike which ended on Tuesday of that work week. And he and the other employees came back to work on Wednesday of that work week. Now,

(Testimony of Raymond John O'Donnell.)

the sheaf of documents which I have given to Mr. O'Donnell covers the period from November 20, 1946, to December 14, 1946, being the first four work weeks of the period covered by this suit.

The Court: To December what? (Mr. Jenks indicates on documents.)

Q. (By Mr. Jenks): Now, what does this sheaf of documents consist of, Mr. O'Donnell?

A. Those sheets are the daily time records of the employees of the machine shop.

Q. Are they called "Daily Time Sheets"? [13]

A. They are called "Daily Time Sheets," yes.

Mr. Gladstein: Will you have those marked for identification, Mr. Jenks?

Mr. Jenks: Yes, I plan to. I will do that right now. I would ask that this sheaf of documents be marked for identification. I have in mind in that connection that it should not be necessary to put them in evidence but I'd like to have the Court to be able to examine them, and to give testimony with respect to it.

Mr. Gladstein: I wonder if it wouldn't be more advisable to have them in evidence, your Honor, and I would make a suggestion that they can be photostated and the photostats can be substituted for these originals at some convenient date, and then the company could have a return of its original records. I have in mind the strictures of the Circuit Court, and I think it would be well to have some of these original documents in evidence.

(Testimony of Raymond John O'Donnell.)

The Court: Well, it might be well to have some of them as an example, illustration.

Mr. Gladstein: Yes, that is what I had in mind.

The Court: Just as to one or possibly two cases. But any idea to put all of the office work sheets in——

Mr. Gladstein: Oh, no, just the case of one or two employees to illustrate the manner in which the records are kept or what they consist of. [14]

Mr. Poole: I don't think we have any objection to having them go into evidence, if it is just kept down to one or two illustrations. If we put them all in, it will be a record that we can't handle very easily.

Mr. Jenks: Well, let me have this sheaf marked for identification and when we are through we might put one of those in as an example.

The Court: Very well. Mark it for identification.

The Clerk: Plaintiff's No. 1 for Identification.

(The documents referred to were marked "Plaintiff's Exhibit No. 1 for Identification.")

Mr. Jenks: This is Plaintiff's Exhibit 1?

The Court: For identification.

Mr. Jenks: For identification. And that is a sheaf of documents which constitute the daily time sheets for the machine shop employees for the period from November 20, 1946, to December 14, 1946.

The Court: To December 14——

(Testimony of Raymond John O'Donnell.)

Mr. Jenks: Well, the last one is December 14th. The work week ended on Sunday, December 15th, but he did not work on that day, so there is no time sheet for him for that day.

Q. (By Mr. Jenks): Now, would you look at the first of these documents and state if that has to do with any particular day?

The Court: Well, this is the daily time sheet for November [15] 20, 1946?

Q. Does that show the work that Barney Faria did on that day?

A. It shows that Barney Faria worked 8 hours on that day; 4 hours he worked on locomotive No. 4 and 4 hours on locomotive No. 5, making repairs to both of those locomotives.

Q. And these locomotives are locomotives on the plantation's private railroad transportation system?

A. That is correct.

Mr. Jenks: I'd like to have your Honor examine this. You will notice the names of the employees.

The Court: Yes.

Mr. Jenks: On the left side, B. Faria, the third man listed. And on this day at the top, various locomotives and other articles are listed. He is marked as 4 on the locomotive No. 4, and 4 on locomotive No. 5.

The Court: That is the sheet for just one day?

Mr. Jenks: One day.

The Court: That the witness was testifying from.

(Testimony of Raymond John O'Donnell.)

Q. (By Mr. Jenks): Now, will you look at the next sheet, Mr. O'Donnell, and state whether that gives similar information for the next day?

A. That does, except that the 8 hours that Faria worked on that day were all consumed on the repairs to locomotive [16] No. 6.

Q. And what is the date covered by that second sheet?

A. The second sheet is dated November 21, 1946.

Q. And the third sheet, what is that?

A. On the third sheet the date, under date of November 22, 1946, Barney Faria worked 8 hours and all of that time was on locomotive No. 4.

Q. And the next sheet is what date?

A. The next sheet is dated November 23, 1946, and Faria worked 8 hours that day and all of that time was on locomotive No. 5.

Mr. Jenks: Now, would your Honor care to look at the succeeding days?

The Court: Why, I think not. I assume they are the hours worked, set out here, and if he worked at anything else other than locomotive repair work I assume that Counsel for the Defendants will point that out to the Court.

Mr. Jenks: Whenever any of these employees did any work outside of their ordinary work, that is shown in the stipulation. Your Honor, if you will look at page 478 of the stipulation, that is, the work week April 14 to 20, 1947, for this same employee, Barney Faria, it shows that he worked in that work week in making repairs to locomotive

(Testimony of Raymond John O'Donnell.)

numbers 3 and 6; he also worked 3 hours in that work in the machine shop in making parts for a new cane-planting machine, and 5 hours in [17] repairing plumbing shop tools in the machine shop. That shows how we have set forth the special work that he did, as an example.

Q. Now, with reference to these locomotives, locomotives 3, 4 and 5 that are referred to in the first work week for Barney Faria, is it correct that the locomotives on the plantation are designated by number? A. That is correct.

Q. These refer to particular designated locomotives? A. Yes.

Q. Now, Mr. O'Donnell, I hand you document which is headed on one side, "Time Record, November 25, 1946, to December 31, 1946," and on the other side "Employee's Time Record, October 28, 1946, to November 24, 1946." Will you describe that document?

A. This is a record that is kept, or similar record is kept, for every employee working on an hourly basis on the plantation. The record shows the man's name, his classification, his rate of pay, and for each day worked during the pay period which extends from, in the case of November, in this page, November 25, 1946, to December 31, 1946, all hours worked by the individual are shown. If he worked, if just 8 hours are shown, that is the normal work day, and 8 appears under the "H" for hours worked.

(Testimony of Raymond John O'Donnell.)

Q. This is the record for Barney Faria? [18]

A. This is the record for Barney Faria.

Q. I notice at the top that it refers to Barney Quinta Faria. That is the same person as Barney Faria? A. Same person.

Q. In this case?

Mr. Jenks: I'd like to have this marked for identification.

The Clerk: Plaintiff's No. 2 for Identification.

(The document referred to was marked "Plaintiff's Exhibit No. 2 for Identification.")

The Court: That is similarly a detailed work sheet?

Mr. Jenks: I will point that out to your Honor.

Q. Would you examine the work week for November 18 to 25, 1946, Mr. O'Donnell, and state what that shows as to whether or not Barney Faria worked on each day of that work week and how long he worked?

A. It shows that he did not work on November 18 and 19 because at that time the company was not operating. He worked on the 20th, 21st, 22nd and 23rd, that is, Wednesday through Saturday, 8 hours each day or 32 hours for that work week.

Q. And does this show also—there is a column, weekly total—does that show the total number of hours he worked?

A. That shows the total number of hours he worked.

Q. In the work week? [19]

(Testimony of Raymond John O'Donnell.)

A. In the work week.

Q. Does it also show his total compensation for the work week?

A. It shows his total compensation, $40.64 for that work week.

The Court: $40 and what?

The Witness: $40.64.

The Court: When was this sheet made up?

The Witness: That sheet was made up—the time is posted from the small sheets that were shown as to the daily time sheet, the morning following the day that the work was done.

The Court: All right.

Mr. Jenks: I was going into that. Possibly I should do it now.

Q. With reference to the daily time sheets for Barney Faria and other employees, who makes those out and when?

A. The time sheets are made up the morning following the day the work was performed by the shop foreman from records that he keeps of the work performed the previous day.

Q. Well, now, the first time sheets for the machine shop employees which covers November 20, 1946, and has Barney Faria's record, the first time sheet, whose signature is that?

A. That is the signature of S. W. Bomke, and he at that time was the master mechanic for the plantation in charge of the machine shop. [20]

Q. Now, the employee's time records, such as

(Testimony of Raymond John O'Donnell.)

Plaintiff's Exhibit No. 2 for identification, when are those made up?

A. Those are made up progressively throughout the entire pay period, the time being recorded as soon as the daily time sheets are received in the office, which is the next morning.

Q. In other words, Barney Faria's time, 8 hours on November 20, 1946, would have been recorded on his employee's time record on November 21, 1946? A. That is correct.

The Court: Is Barney Faria in court today?

Mr. Gladstein: He is not, your Honor. We expect to have him in tomorrow.

The Court: Very well.

Q. (By Mr. Jenks): Now, this work week with respect to which you testified, November 18 to 24, to 25, 1946, I take it is typical of all of those?

A. It is typical of all of those.

Mr. Jenks: I would like to have marked for identification the employee's time record of Barney Faria for the period from June 30, 1947, to July 27, 1947.

The Clerk: June 30, 1947, to July 27, 1947, that is Plaintiff's No. 3 for identification.

Mr. Gladstein: Which employee is that? [21]

Mr. Jenks: The same one.

Mr. Gladstein: And the date, please?

The Clerk: June 30, 1947, to July 27, '47.

(The document referred to was marked "Plaintiff's Exhibit No. 3 for Identification.")

(Testimony of Raymond John O'Donnell.)

Mr. Jenks: Your Honor, I am bringing this one because it illustrates how the records were kept where an employee receives overtime compensation.

Q. I call your attention, Mr. O'Donnell, to the work week beginning July 21, 1947. That is on page 481 of the stipulation, at the bottom of the page. Now, Mr. O'Donnell, what does that show with respect to Monday of that work week, with respect to the hours worked and the hours worked at the overtime premium?

A. It shows that Faria worked 9 hours on Monday, one hour of which is overtime because it is in excess of the 8 hours customarily worked by him.

Q. Then there was no overtime on Tuesday, Wednesday or Thursday?

A. That is correct.

Q. He worked 8 hours on each of those days?

A. Yes.

Q. On Friday it shows that he worked 10 hours, of which 2 were paid at the overtime rates?

A. It does. [22]

Q. And Saturday, 10 hours, of which 2 were paid at the overtime rates. Or I might better say he received the overtime premium for those two hours. A. That is right.

Q. He also worked on Sunday 8 hours?

A. Eight hours on Sunday.

Q. Did he receive the overtime premium for those 8 hours?

(Testimony of Raymond John O'Donnell.)

A. For those 8 hours he received overtime premium.

Q. Now, does this show the total hours that he worked in the work week?

A. It shows that he worked 61 hours during that work week, 13 hours of which were overtime hours, and he received premium pay for those 13 hours.

Q. What was his total straight time pay?

A. For the 61 hours of straight time pay he received $77.47.

The Court: What was that?

The Witness: That is at the rate of $1.27 per hour.

The Court: And what rate for the 13 hours?

The Witness: He received half of that rate, or 63½ cents.

Mr. Gladstein: Could I interrupt at this point to say, aren't you using language that comes from the record? That is true in the way you compute straight overtime, Mr. O'Donnell, but isn't what you mean to say this, that during that week [23] you paid Mr. Faria the straight time rate for 48 hours and the overtime rate at time and one-half for 13 hours?

Mr. Jenks: Well, whether he means to say that, that is the fact.

The Court: It works out apparently that way.

Mr. Jenks: It works out the same way.

The Court: 48 and 13 would make the 61 used

(Testimony of Raymond John O'Donnell.)

for which he gave the ordinary straight time, and then added a half time for the 13 hours.

Q. (By Mr. Jenks): Would you explain what the initials "S.T." are on the first line under the word heading "Day Work" or opposite "Day Work"? A. That stands for straight time.

Q. And the "P.T.," what does that mean?

A. Premium time.

Mr. Jenks: Now, if your Honor would care to look at that, it is kept this way: On the left of the page, day work, and broken in two parts, the top part being straight time and the lower part being the premium time. And this is the week we are talking about. You have got 61 hours at straight time and 13 hours of these were premium time. Now, this is shown as 13 hours at half the rate. It works out as Mr. Gladstein suggests, that he did get time and one-half for those overtime hours. (Indicating on exhibit.) [24]

The Court: What I don't understand, though, is that this week he got overtime for working on Saturday. Is Saturday a day that he is required to work?

Q. (By Mr. Jenks): Would you explain what overtime he received on Saturday and why he received it, Mr. O'Donnell?

A. May I see that? (Exhibit handed to the witness.)

The Court: Why he didn't receive it on other Saturdays?

(Testimony of Raymond John O'Donnell.)

A. The company's policy, and in conformity with its contract with the union, overtime is paid after 8 hours of work. In this case the man worked 10 hours. Therefore, 2 hours of those were in excess of his normal 8-hour day of work, and he received overtime for those 2 hours.

Q. In other words, if he works 8 hours on a Saturday, he does not normally get overtime?

A. No overtime.

Q. If he works 9 hours on a Saturday, he gets overtime for one of those hours? A. Yes.

Q. If he works 9 hours on a Monday, he gets overtime for the one, for one of those 9 hours?

A. That is correct.

Mr. Jenks: You will notice, your Honor, that this man got overtime on Monday for one hour, because he worked one hour in excess of 8. [25]

The Court: Oh, yes. It was Sunday that he worked, too, this week. He worked Saturday 10 hours and then Sunday 8 hours. That's what it is.

Mr. Jenks: Now, for your Honor's information, for this employee Sunday was his day of rest, and he was entitled to overtime compensation for working on his day of rest. In addition, he had already worked 48 hours in the work week. And under the collective bargaining contract he was entitled to overtime compensation for the work over 48, over the straight time hours. And all the Sunday work fell in that classification.

The Court: The agreement between the union,

(Testimony of Raymond John O'Donnell.)

for the union men with the plantation is a 48-hour week?

The Witness: Except those covered by the—those people who are covered by the Fair Labor Standards Act are on the 40-hour week. And all others are on the 48-hour week.

Q. (By Mr. Jenks): You have some employees who receive overtime after 40 hours?

A. We do.

Q. And some who receive overtime after 40 hours during certain periods but not during others?

A. That's correct.

Q. And that is all reflected in the stipulation?

A. Yes. [26]

The Court: And the plantation concluded that the kind of work that Barney Faria was doing was work that was exempt from the Fair Labor Standards Act?

The Witness: That is correct, your Honor.

Mr. Jenks: Does your Honor have any further questions with regard to these particular records before I go on?

The Court: Nothing occurs to me at this time. They seem to be quite clear.

Mr. Jenks: Mr. Poole suggests that I might call your attention to the fact that one of the exhibits to the stipulation is the collective bargaining contract, and that it sets forth the overtime practices pursuant to the contract between the union and the company; that is, overtime after 48 hours, overtime

(Testimony of Raymond John O'Donnell.)

during the day of rest, and various overtime on holidays and various other things.

The Court: Well, is the operative and final working arrangement without any regard to the Fair Labor Standards Act?

Mr. Jenks: Well, I don't think Mr. Gladstein is prepared to concede that they are in accordance with the Fair Labor Standards Act.

Mr. Gladstein: Oh, I think it is clear that the collective bargaining agreement represents the best bargain that the union was able to obtain at the time and under the circumstances and by no means represents either its ultimate objective or [27] desire; nor, on the other hand, does it set aside the requirements of the Fair Labor Standards Act.

Q. (By Mr. Jenks): Now, Mr. O'Donnell, I believe you stated that there were daily time sheets for all employees who are paid at the hourly rates?

A. That is correct.

Q. And there are also employees' time records for all of the same employees?

A. That is correct.

Q. Now, coming back to Barney Faria, would you explain in general why such detailed records were kept for his work? What I have in mind is this: Why did you show in your daily time sheets information, for him and for the other employees in the machine shop, how many hours were worked on each locomotive rather than showing that he worked so many hours at such a rate?

(Testimony of Raymond John O'Donnell.)

A. Well, that is in conformity with the company's policy of keeping as accurate and as detailed cost records as is possible. In order to meet the very strict competition from offshore producing areas and to market our sugar profitably, it is contingent on management to keep a constant vigil on all of its costs. And in order to know what the costs are, the accounting staff is charged with the responsibility of breaking these costs down, or at least in preparing the elementary [28] records in such detail as management will have available the costs on the various operations on the plantation. In the case of Barney Faria, his work is charged to the job that he does or the unit that he works on so that we may at any time determine whether in the judgment of management the costs are excessive on that particular piece of equipment, and whether some corrective measures should not be taken either to reduce them or dispose of that particular piece of equipment.

Q. Now, I'd like to go into the question of——

The Court: Pardon me for interrupting, but I'd like to ask, was all the work that Barney Faria did there was in the locomotive repair shop?

The Witness: Except that when on occasions, as the record will show, he was asked to do other work, maybe of an emergency nature.

The Court: Suppose an O. R. and L. engine or some equipment of the O. R. and L. had become disabled at Waialua, or any other, and they called

(Testimony of Raymond John O'Donnell.)

on the plantation for some help of a temporary nature, and he had been called out of the shop for an hour or a half day, or what not, would that show on the same time sheet and record?

The Witness: Well, at no time during my experience had that happened. It is difficult to make a statement to that effect. But presumably it would —since that would be his work record and we would have to know how to recompense him for the [29] time so spent, it would undoubtedly be shown on the record.

Mr. Jenks: Your Honor, in that connection I'd like to call your attention to the work week, again, of April 14 to 20 on page 478, for Barney Faria, in which it does show two different things that he did do other than repair locomotives. And there are on certain other work weeks throughout here which show the same thing. So that the answer is that whatever he did, whenever he did something which was out of the routine, that was shown also on his daily time sheets, and it is reflected in the stipulation.

The Court: Yes, that answers my question.

Q. (By Mr. Jenks): Now, I'd like to go into the problem now, the question now of whether in all cases the daily time sheets were in as great detail as they are for Barney Faria, and I'd like to ask you particularly with reference to the mill employees. You might take, for example Simon Cumlat, whose number is 57, paragraph 57. Would you explain what his daily time sheets will show?

(Testimony of Raymond John O'Donnell.)

A. He is a fireman. I don't have his records here, and I have to rely on my memory.

Q. He was in the boiler house?

A. The boiler house. With respect to the employees in the factory where their duties are routine and the same each recurring day, all that is shown on their time sheets as the [30] number—all that is shown on their time sheets is the number of hours that they were working on their assigned operations. If at any time one of those employees was to do work other than his regularly assigned work, then the time record would show what type of work was performed and the number of hours that he worked on that assignment.

Q. In other words, where an employee has one job continuously, you don't show that job continuously? You only show the exception, is that right?

A. That is correct.

The Court: Well, now, if it was an entirely different department a considerable distance away, while he was on the one type of employment and then transferred to another, would he not come under two different timekeepers?

The Witness: That is conceivable but it rarely happens in the case of men working in the factory. That is, they are assigned to a job and day after day they work there. But if, as you suggest, he for some reason were to be transferred to another department, then the time sheet of his regular duty would show that he was transferred to another department and the man for whom he worked, the

(Testimony of Raymond John O'Donnell.)

supervisor for whom he works, would indicate the work that he did and the hours that he worked on that job. When that time sheet came into the office, it would be recorded on his time record, the operations he performed, and the number of hours that he performed them. [31]

The Court: The time sheets, were they kept for the individuals by their individual names or mostly by numbers?

The Witness: They are kept by their names—well, both by their names and their numbers.

Mr. Jenks: I might note in that connection, if your Honor please, the time sheets which are marked as Plaintiff's Exhibit No. 1 for Identification show Faria, 216——

The Witness: That is the man's number.

The Court: That doesn't show on this sheet.

Mr. Jenks: No, it does not.

Q. Well, now, with regard to this extensive detail again on the daily time sheets, how about shop employees? Take, for example, Edward Mori, Edwin Mori, 71, a carpenter shop employee. What detail would be shown there?

A. Every job that Mori worked on during the day would be listed, and the number of hours that he spent on that job.

Q. And how about such a man as a tractor operator?

A. The same with a tractor operator.

Q. There are various things that a tractor does, such as preparing for planting, plowing, ratooning,

(Testimony of Raymond John O'Donnell.)

cultivating, hauling cane cars in the fields, probably others. Are those things shown separately?

A. They are shown separately, yes, they are.

Q. With reference to that again, will you state why all those things are shown separately generally throughout [32] the plantation for people who do different types of work?

A. All of the operations where possible are broken down to the unit costs. If a man works in the field plowing, the cost of that operation is converted into the cost per acre. And in order to determine that cost, it is necessary to reflect in the record only the work actually done on that particular operation.

Q. What is the significance to the plantation having that information?

A. It is due primarily to control our costs.

Q. Are you able to compare costs in different, in one field with costs in another field?

A. Yes, and that is one method of controlling, by comparison. If we find that the plowing in one field is greater than the plowing in another field, unless there is some significant reason known to management why that reason should occur, we usually check into it to find out.

Q. Were these records in this detail kept before the Fair Labor Standards Act was enacted in 1938?

A. To my knowledge, going back 24 years, those records were kept in as great detail then as they are today.

(Testimony of Raymond John O'Donnell.)

The Court: Pardon me for interrupting so much——

Mr. Jenks: I don't mind at all.

The Court: Take the work of a tractor, it is conceivable that at certain times in certain operations the tractor might be working on some project that was as a capital improvement [33] rather than a running expense connected with the profit, or something like that. Now, how would you take care of that?

The Witness: Well, every permanent improvement is assigned a number, a job number, and all work performed on that improvement is charged against that particular number. And it is not an operating expense.

Q. (By Mr. Jenks): Would that number then appear on the daily time sheet of the daily tractor operator if he worked?

A. That number would appear on the daily time sheet.

Mr. Gladstein: How can you tell at the time that he did that work whether it was in one category or the other?

The Witness: Well, usually before any work of a questionable nature is undertaken, I am called upon to decide whether that is a capital charge or an expense charge. And if in my judgment it is a capital charge, a job number is assigned to it.

Q. (By Mr. Jenks): Now, with reference to Barney Faria again, you have shown by your testimony that his daily time sheets plus his employee's

(Testimony of Raymond John O'Donnell.)

time records gives full data with respect to the work he did, the hours he worked and the compensation he received, both for straight time compensation and overtime premium. However, I'd like to call your attention to the notes in the stipulation of Barney Faria on page 484 of the [34] stipulation, and I'd like to read into the record the first sentence of the notes.

> "All of the work of this employee during the period from November 20, 1946, to and including September 14, 1947, in making repairs to locomotives, as set forth in this numbered paragraph, was performed on the plantation, in the machine shop, the welding shop, and the roundhouse, and in yard areas adjoining the same."

Now, do the facts set forth in that sentence themselves appear in the daily time sheets or in the employee's time records? A. They do not.

Q. Are the facts set forth in that sentence correct? A. They are.

Q. How do you know they are correct?

A. Well, because that is the place where the repairs are customarily made, and I know of no other place where they could be made.

Q. The places listed there are the places where repairs are made to the locomotives?

A. That is correct.

Mr. Jenks: I mention that, your Honor, in order to point out the situation. There are various places in this situation, statements of fact similar to this

(Testimony of Raymond John O'Donnell.)

that I just read, which do not come from direct records. And we have checked that and found that they are right. I want to point out that there [35] is this sort of stuff in the stipulation in addition to the records taken from the daily time sheets and the employees' time records.

The Court: Well, it seems quite convincing as to this technically skilled mechanic who applied himself all the time to, practically all the time to locomotive repairs, or something connected with that. But the general statement of that nature when applied to certain other types, varieties of employment, if it wasn't supported by any record wouldn't seem very convincing.

Mr. Jenks: It is supported by the knowledge of the people who are acquainted with the facts.

The Court: The office manager without making a considerable inquiry wouldn't be able to keep track, wouldn't be interested perhaps in the fact of all the varieties of work that every employee performed every day.

Mr. Jenks: The varieties of work, if your Honor please, are shown in the records, in the written records, in the current written records. Now, we really wanted to show here where this work was done.

The Court: Well, where the work was done would have something to do with, perhaps, variety.

Mr. Poole: I think what Mr. Jenks also wanted to point out—I believe it was implied in his statement—that much of the general information in

(Testimony of Raymond John O'Donnell.)

here, having to do with the location [36] of where the work took place and otherwise, cannot be found in any records. It has to be, that information has to be developed from the persons on the plantation who are familiar with the place. And I don't think that Mr. Jenks wanted to suggest that all that information came from Mr. O'Donnell. It came from people on the plantation who are most familiar with it. And it was carefully checked before it was recorded and written up in this stipulation of facts.

Mr. Gladstein: Well, I may say, your Honor, that when the time comes for the Defendants to put on their case, of course the Defendants who testify know very well the portions of the plantation or the grounds, the land, shops, and so on, of the corporation where they worked. And I will bring out testimony as to just where they worked.

The Court: Yes. Well, I was wondering in that connection in determining for this stipulation record whether the particular employees were being dealt with in the matter—whether they were brought in the discussion.

Mr. Gladstein: I will bring that out, your Honor, in the testimony that I produce.

The Court: All right.

Mr. Jenks: Your Honor, I am not attempting at this time to give testimony in support of all the facts in here. We could have done that and we wouldn't have needed the stipulation. I am merely trying to show the nature of some of the basic [37] records. I might say in that connection that the

(Testimony of Raymond John O'Donnell.)

preparation of this has largely been under my supervision.

The Court: Yes.

Mr. Jenks: And I am satisfied, subject to errors that can never get out, that it is accurate.

The Court: Well, I hope you will understand that I am not attempting to carry you into cross-examination, but merely to get the full and complete understanding of what you are endeavoring to get in.

Mr. Jenks: That is all I have of this witness.

Cross-Examination

By Mr. Gladstein:

Q. Mr. O'Donnell, you gave some testimony concerning the payment of overtime to Mr. Faria when he worked on his day of rest. Do you recall that?

A. Yes.

Q. As I understand it, during the period covered by this case, when a man, each of the men—or let us talk about Faria for a moment first. Faria had a definitely assigned day of rest—right?

A. Right.

Q. And if for one reason or another the plantation called on him to work that day, each of the hours he worked on that day was paid at the overtime rate of time and one-half? [38]

A. That is correct.

Q. Now, your work week during the period of time covered by this proceeding began on what day of the week? A. On Monday morning.

(Testimony of Raymond John O'Donnell.)

Q. On Monday? Now, let us assume that the day of rest of an employee was Saturday. If for one reason or another he did not work on Monday but commenced work on Tuesday, working 8 hour a day and therefore working Tuesday, Wednesday, Thursday, Friday and Saturday, was he paid over time for the 8 hours on Saturday because that was his day of rest? A. No.

Q. He was not? You gave some testimony——

The Court: Well, you say overtime for Saturday because that was the day of rest.

Mr. Gladstein: As I understood it, the witness said that when workers were called to work on their day of rest they were paid overtime.

The Court: I understood from that that the day of rest in this case of Faria was a Sunday.

Mr. Gladstein: Yes, that's right. But I was asking the witness whether in cases where an employee's day of rest was on Saturday and he had worked only commencing on, say, Tuesday.

Q. Well, let's take the Faria case. Take a week in which he did not work on Monday and Tuesday but only worked Wednesday, Thursday, Friday and Saturday and then on Sunday, [39] Sunday being supposedly his day of rest, totaling 40 hours that week because he worked 8 hours each day. Did he get overtime or premium time for the hours he worked on Sunday?

A. If the individual absented himself from work on a regular day and then turned out for work on

(Testimony of Raymond John O'Donnell.)

his day of rest, he would not be paid overtime for that day.

Q. Well, if he wasn't called or if he was ill or for some other reason he didn't work on Monday and Tuesday of that week—we are talking now about Faria—did he receive overtime for the hours between 32 and 40 that he worked on the Sunday?

A. It was not customary to do that.

Q. Not customary? Supposing he started to work on Tuesday, working Tuesday, Wednesday, Thursday, Friday and Saturday, 8 hours each day, making a total of 40 hours, Sunday being his day of rest; if he worked on Sunday at the request of the company, did he receive overtime for those 8 hours?

A. If his work week were to start on Tuesday?

Q. Yes.

A. Well, his day of rest would normally be Monday if he were to start on Tuesday.

Q. No, we are talking about Faria whose day of rest was Sunday. A. Yes.

Q. We are agreed on that?

A. Yes. [40]

Q. Well, now in those weeks for one reason or another the man did not work on Monday or Tuesday perhaps, whenever it might be, and the company called on him to work on Sunday, up to Sunday he having worked 40 hours, but Sunday with working 8 hours on Sunday making a total of 48 hours that week, did you pay him time and one-half for the hours that he worked on Sunday?

A. We would pay him.

(Testimony of Raymond John O'Donnell.)

Q. So that there were some instances where men were paid time and one-half for the hours between 40 and 48 in that particular work week?

A. Yes.

Q. And those were the cases where the men were called to work on a day which otherwise would have been the day off? A. Right.

The Court: Well, this Sunday, was that applicable to all employees on the plantation?

Mr. Gladstein: Only if it was his day off, is that right?

The Witness: Well, it depended on the work schedule and the need for the men. Some men were required to work on Sunday as a regular part of the company's operations, and another day was assigned as their Sunday. Customarily Sunday would be the day of rest.

Q. You mean for most employees?

A. For most employees and particularly Barney Faria. [41] His day of rest was Sunday.

Q. But there were some who worked regularly on Sunday and some other day was a rest? And in those cases Sunday was not paid for overtime?

A. That is correct.

Q. Now, the testimony you have given concerning these records that were kept in relation to Faria, is it correct that that testimony that you have given and those records constitute a pattern that is equally applicable to all of the 42 employees who were involved in this case?

A. That is correct.

(Testimony of Raymond John O'Donnell.)

Q. In other words, contemporaneously with the work that was performed by these employees on the very day that this work was performed, some supervisor or person in charge would make notations of some kind as to the kind of work being done and the hours of work that the man or woman employee put in? A. That is right.

Q. And in each instance the following morning that data would be transferred based on the report that the supervisor would make, would be transferred to a time sheet?

A. That is correct.

Q. And then progressively, as you have put it here, and contemporaneously the data from the time sheet would be then recorded on the more permanent record which you call a work [42] record? A. Employee's time record.

Q. And that actually is somewhat in the nature of a pay roll record, isn't it? A. Correct.

Q. Now, in these pay roll records that you kept for these employees, isn't it true that you kept, that you departmentalized the pay roll records and your running expenses under particular designations? A. That is correct.

Q. Now, can you list those designations offhand, or would it assist you to look at one of the exhibits here? Could you make an effort?

A. We have the service departments and they would include the railroad department, the truck department, and we would have the shops such as the track shop, the P and H shop, the welding shop,

(Testimony of Raymond John O'Donnell.)

machine shop, paint shop, carpenter shop, electrical shop, those are departments.

Q. All of those areas and fields of endeavor and work, places of work, are all listed under one category called service shops, is that right?

A. Yes.

Q. And you keep a separate and separately identifiable set of records for that department?

A. For those employees, yes.

Q. How long has that been true? [43]

A. Oh, very close to 20 years, I'd say, maybe longer.

Q. Now, what is the next main department of equal stature to the service shops department that you would name? A. The factory.

Q. And what does that include?

A. That includes the processing of the sugar.

Q. The processing of sugar employees? And what is the beginning point of the processing in terms of the employee or type of working, type of work done by the employee?

A. The handling of the cane in the mill yard would be the beginning of that.

Q. And does that refer to the employee who when the cane car comes alongside the mill weighs it and participates in the job of releasing the cane from the car into the container, the conveyor?

A. That is correct.

Q. Then all other employees and activities from then on within the mill up to a certain point are within the manufacturing department?

(Testimony of Raymond John O'Donnell.)

A. Correct.

Q. Now, what is the ending point?

A. Where the sugar is loaded into the cane cars or into the warehouse.

Q. Or into the warehouse? Now——

The Court: Sugar is loaded into what kind of cars? [44]

The Witness: I beg your pardon? I said, I think I said cane cars. I meant the O. R. and L. freight cars.

Q. And those cars are right alongside the company's warehouse, are they?

A. They are. They were at that time.

Q. That's what I mean. Now, Mr. O'Donnell, are there activities of employees that occur subsequent to the placing of the raw sugar in bins and bags other than the loading into the freight cars that take place and which are not encompassed within your manufacturing department pay roll records? A. I don't recall.

Q. Do you have a shipping department or a warehousing department that is separate and apart from the manufacturing department?

A. We have a warehouse that is separate from the processing, yes.

Q. Now, are there activities that occur after the sugar has been fully processed and either bagged—well, I guess it all was bagged during that period, was it not? After the sugar was fully processed and bagged, were there activities of employees that

(Testimony of Raymond John O'Donnell.)

occurred that you classified under your warehouse department? A. Not under warehouse, no.

Q. Suppose sugar was stacked away for awhile, and then a week or two weeks or a month or a greater period later the [45] company decided to ship it, who would handle that work?

A. The same employees who handled the bagging of the sugar and putting it on the freight cars.

Q. I see. And all of those employees come within the category of the manufacturing department? A. That is correct.

Q. Now, what other departments did you have?

A. Well, we had the field department.

Q. And what did that encompass?

A. Well, that would take, preparing for plowing, plowing, planting, ratooning, cultivating, irrigating, fertilizing.

Q. Agricultural work?

A. Agricultural work.

Q. Up to what point?

A. Up to the time that the cane was put on the main line of the plantation to take to the mill.

Q. Up to the point, in other words, where the permanent transportation line took over?

A. That is correct.

Q. And what other departments?

A. Well, those are the main departments. The field, the factory and the shops and the warehouse.

Q. Well, you had and still have the town of Waialua with company houses?

A. That's correct. [46]

(Testimony of Raymond John O'Donnell.)

Q. And the company maintains and did during the period involved here, maintained, repaired and otherwise kept up those houses—correct?

A. Yes.

Q. Now, did you have a department under which you, both for pay roll purposes and other purposes, encompassed or embraced in a separate manner the activities of employees engaged in maintaining the village houses?

A. We have. We have a village facilities department.

Q. Village facilities? A. Yes.

Q. And would you indicate, please, the activities embraced by the village facilities department?

A. Well, they were the carpenters who repaired the houses, the painters who did likewise, the plumbers; they were all assigned to the village facilities department.

Q. Were these carpenters assigned separately from the work that is done in the carpenter shop?

A. The carpenter shop was separated into two categories, one village carpenters and the other service department, one industrial carpenters and the other the service department, the village facilities carpenters.

Q. I see. Is that true of the other service shops, too? The plumbers?

A. No, the plumbers all remained intact in one group, [47] and the painters. It was just the carpenters.

Q. All right. In the case of the carpenters,

(Testimony of Raymond John O'Donnell.)

within the shop itself you had a compartmentalization or division between two departments, is that right? A. That's right.

Q. And a number of employees were permanently assigned to service the village houses and a number of them were permanently assigned to do the industrial work, service work, in the carpenter shop, is that right? A. Industrial.

Q. Now, what other types have you?

A. Well, there was the hospital.

Q. That was a separate department, was it?

A. That was separate.

Q. And I guess the activities embraced there are pretty well indicated simply by the designation of the word "hospital." It would be your nurses and the attendants and doctors and so on?

A. Yes.

Q. What about the maintenance and upkeep of the house itself? A. The building?

Q. Yes.

A. That would be performed by the men assigned to it.

Q. Village service? [48]

A. Village service.

Q. The service facilities, is that right?

A. That's correct.

Q. All right. What else?

A. The office, the accounting department would be another one.

Q. That would be the white collar portion, is that right? A. If you wish to term it such.

(Testimony of Raymond John O'Donnell.)

Q. Would it include the laboratory workers?

A. No.

Q. That was separate?

A. That was separate.

Q. So that the office would be the administrative end of it? And that would include, as you say, accounting and administration, is that right?

A. That's right.

Q. Could you indicate just briefly the titles of the job, the job titles?

A. Well, bookkeepers, pay roll clerks, distribution clerks, cashier, stenographers.

Q. And what other departments?

A. Civil engineers.

Q. And what did that embrace?

A. That was the land department having charge of the [49] land that the company owned, the leases to the lessees, the making of surveys as required, land surveys.

Q. And what job titles were to be found during the periods covered by this proceeding in that department?

A. Civil engineers, surveyor, rod men.

The Court: Was that in your office department?

A. No, this is in another department.

Q. Civil engineers, have you concluded as to that department? A. Yes.

Q. All right, what other department?

A. Agricultural control and research department, which is part of the field really but maintained as a separate department.

(Testimony of Raymond John O'Donnell.)

Q. What did that embrace?

A. Well, those were the technical people, the agriculturists, the irrigation specialist, and highly-trained research individuals.

Q. These were professional research people, were they, in the main?

A. Not entirely but a good many of them were.

Q. And were their assistants?

A. Were their assistants.

Q. And where did they perform their endeavors?

A. Well, their headquarters were in the administration [50] building but their activities took them out on the plantation.

Q. Into the field, of course? A. Yes.

Q. For example, to obtain samples of cane and make tests, and so forth?

A. That is correct.

The Court: Well, they took care of the meteorological work?

The Witness: That is correct.

Mr. Gladstein: Geological work did your Honor ask?

The Court: Meteorological, rain gauges, and so on.

Q. Where did the construction and repair and upkeep of flumes, irrigation ditches and other equipment having to do with irrigation, in what department do you find those employees?

A. The concrete flumes, the ditches were all maintained by the field department; the siphons,

(Testimony of Raymond John O'Donnell.)

the huge siphons were repaired under the supervision of the civil enginer. He would requisition labor as required for that, for those jobs.

Q. And from what department would he get such labor? I suppose he'd want skilled labor from the shops?

A. When those were required, then he'd requisition machinists or welders, whatever type of work was required.

Q. And will you continue with your answer?

A. And the wooden flumes, that was the responsibility [51] of the industrial carpenters, carpenters; pipelines would be under the civil engineer and he would requisition——

Q. I suppose he would get plumbers, would he, from the plumbing shop?

A. In some instances, yes.

Q. Now, were there any other departments? Was there an auto and truck department as such, separate and apart from others?

A. I don't mention that on my list. There were, yes, the truck department.

Q. And what in general did that department embrace?

A. Well, the truck operators, the mechanics in the garage who repaired and serviced those; the automobiles and trucks would be in that department.

Q. And did that department include the employees who would be called on from time to time

(Testimony of Raymond John O'Donnell.)

to drive, for example, into Honolulu to pick up material or equipment for the plantation and deliver it to the plantation? A. Yes.

Q. And also such instances where the plantation would have occasion to deliver from the plantation to someone in Honolulu? A. Yes.

Mr. Gladstein: Does your Honor wish to take a short recess?

The Court: Yes.

(A recess was taken at 11:15 a.m.) [52]

After Recess

Q. (By Mr. Gladstein): Now, Mr. O'Donnell, would you be good enough to enumerate the remaining departments that your Company maintained. These are major departments and not just subdivisions within departments; isn't that right, sir? A. Yes.

Q. Yes.

A. I believe I have covered them all.

Q. All right. Now, when these departments were maintained separately in the manner that you have indicated, was that for a number of purposes, including pay roll, but also for cost accounting purposes, tax purposes, and other purposes?

A. Primarily for cost control.

Q. Cost control. In your testimony, in your direct testimony, you made reference to—do you recall that you made reference to people covered

(Testimony of Raymond John O'Donnell.)

by the Fair Labor Standards Act who received overtime after 40 hours in each work week?

A. Yes.

Q. Which types of employees did you have reference to?

A. The warehouse, the factory and allied shops during the off season, the railroad department when it hauled cars to the O. R. & L. main line.

Q. Any others, sir?

A. The office staff, the accounting office.

Q. Any others? [53]

A. No, I believe that is all.

Q. That is to say, the Company's own version of its obligations under the Fair Labor Standards Act was such that these types of employees whom you have enumerated received overtime after 40 hours in each work week? [54]

* * *

Q. (By Mr. Gladstein): Isn't that so?

A. That is so.

Q. Your testimony, Mr. O'Donnell, made reference to the fact that for many, many years the Company has kept remarkably and meticulously detailed records of the work and duties performed by the employees, with a primary purpose in mind of knowing just what the sources were of the costs of each item so that cost control could be maintained and developed and improved; correct?

A. That is correct.

Q. And you said, in that connection, that the primary [57] motive, I take it, was that you wanted

(Testimony of Raymond John O'Donnell.)

to market your sugar profitably; isn't that right?

A. Yes.

Q. And when you used that expression, "to market the Company's sugar profitably," did you have in mind the marketing of the Company's sugar in the world sugar market?

A. I had in mind marketing it with the agency that would accept our sugar and give us a fair return so that we could remain in business.

Q. What agency was that?

A. Well, customarily the sugar is marketed through the Hawaiian Sugar Planters.

Q. To whom?

A. To Crockett, California and Hawaiian Sugar Refinery.

Q. And they do the refining; isn't that right?

A. Correct.

Q. That is, they do the refining for Waialua?

A. I don't know whether all of it is done by the Crockett Refinery or not, but I assume that most of it is.

Q. And after the refining of the sugar, that is sold by C & H; isn't that right, sir?

A. I would hesitate to say that. It would purely be a supposition on my part. I don't know actually whether that is so or not. I couldn't testify as to that.

Q. The profit, however, that the Wailua Company receives [58] comes to it after and as a consequence of the sale of refined sugar by C & H in the world market, isn't that right, sir?

(Testimony of Raymond John O'Donnell.)

A. There again I wouldn't go on record as saying that. We sell raw sugar and we are reimbursed, or compensated, for the raw sugar that we produce.

The Court: Well, don't you receive dividends on profits that Crockett Refinery makes?

The Witness: We receive dividends from the California and Hawaiian Sugar Refining Company on the stock that the Company owns in the refinery.

Q. (By Mr. Gladstein): Isn't that the only money that your Company does receive for the raw sugar produced by it? That is to say, dividends from the C & H Company after the sale by that Company of refined sugar?

A. Would you repeat that again?

Mr. Gladstein: Yes. Would you read it.

(Question read.)

Mr. Poole: Your Honor, I want to make an objection to the question which he is putting to the witness now. I think that it is completely immaterial to the issues which are presented by the pleadings and which your Honor has for decision. It has nothing to do with the question as to whether or not the Fair Labor Standards Act obligations are applicable to the 42 employee defendants. He is seeking to show some connection here between Waialua Agricultural Company, the [59] plaintiff in this case, with C & H, a connection and relationship which we acknowledge, but so far as being at all pertinent to the issue, we see no pertinency.

(Testimony of Raymond John O'Donnell.)

and I object to the testimony, and I should like to have a ruling on it, because I think that the——

The Court: Well, the only pertinency that I can see is as to the question whether the sugar goes into interstate commerce.

Mr. Poole: That is acknowledged in the pleadings. It is not in issue, and we admit it here today.

Mr. Gladstein: I think it is material, your Honor, and, as a matter of fact, I have previously given notice to Counsel on the other side of my intention to elicit evidence on this matter; and, for the purpose of shortening things, a statement of facts was prepared, consisting of two pages, which I am prepared to read now into the record, based on your Honor's ruling. And, as I understand it, Counsel for the plaintiff are willing to stipulate to the correctness of the facts contained in this two-page statement, reserving, however, their objection as to materiality. I would like to offer this now as evidence; that is to say, as a stipulation in which the facts are stipulated to by both sides, except that the plaintiff objects to the facts so stipulated on the ground that they are immaterial.

Mr. Poole: I would like to make a further statement. [60] Your Honor, the attorney for the defense has notified us, generously, I should say, in advance, of his intention to put into the record much material that we think the Ninth Circuit will not condone as being made a part of this record; and, in view of what happened before and some of

(Testimony of Raymond John O'Donnell.)

the remarks that were made by Judge Fee, we intend to object to it, for we don't think it should go in, and ask for a ruling, and allege error if it is relied upon; and we think we should do that.

This is one of those matters about which he is talking now. However, I agree that he has stated the fact that with respect to the statements set forth in the material that he is about to read, that they are true and they are accurate, but we see no place for them in this record. We think they are completely immaterial. As I stated before, I object to anything going into the record of this character, and I ask for a ruling from your Honor as to its admissibility.

Mr. Gladstein: May I suggest that your Honor reserve ruling until I read this statement, so your Honor will know what it is you are to pass on.

The Court: I can't rule without knowing what it is.

Mr. Gladstein: All right. I am about to read a two-page statement I had reference to and with respect to which Mr. Poole has correctly stated that it represents a correct statement of the facts; and this is the statement:

"California and Hawaiian Sugar Refining Corporation, [61] Limited, is a California corporation which is and during the period from November 20, 1946, to September 14, 1947—" the period involved in this proceeding "—was qualified as a Cooperative Marketing Association under the Federal Capper-

(Testimony of Raymond John O'Donnell.)

Volstead Act and under the applicable laws of the State of California.

"During said period the Association had thirty-one members, all of which were plantation companies engaged in the Territory of Hawaii, in the production of raw sugar. During said period and for many years prior thereto and continuing until the present time plaintiff—" Waialua Company "—was and is a member of the Association.

"During each of the years 1946 and 1947 the members of the Association produced in excess of 75% of the total raw sugar produced in the Territory of Hawaii. During each of said years the producers of raw sugar in the Territory of Hawaii who were not members of the Association sold their raw sugars for the most part to Western Sugar Refinery, in San Francisco, operated by J. D. and A. B. Spreckles Company. During each of said two years Honolulu Plantation Company, not a member of the Association, operated a refinery at Aiea, on the Island of Oahu, at which it refined its own raw sugar and raw sugar purchased by it from other non-members of the Association."

Now, "During each of the years 1946 and 1947 the [62] members of the Association, including the plaintiff—" Waialua Company "—were under contract to deliver and did deliver to the Association—" That is the California and Hawaiian Sugar Refining Corporation, Limited. "—all of the raw sugar produced by them in the Territory of Hawaii.

(Testimony of Raymond John O'Donnell.)

except only such raw sugar as was sold by them for consumption in the Territory of Hawaii,—" And the amounts of such sugar, raw sugar, sold in the Territory were inconsequential.

"During each of the years 1946 and 1947 and for many years * * *—" before that "—and continuing until the present time the Association has operated a sugar refinery at Crockett, California." Which, I understand, is the largest such refinery in the world. "During each of the years 1946 and 1947 the contract between the Association and its members—" including the Waialua Company "—permitted the Association to process all raw sugar delivered to it by its members and to sell the refined sugar resulting therefrom and also permitted it to sell in the form of raw sugar any quantity or quantities of raw sugar delivered to it by its members. In each of the years 1946 and 1947 the Association processed into refined sugar more than 90% of the raw sugar delivered to it by its members and sold as raw sugar less than 10% of the raw sugar delivered to it by its members." [63]

Now, under the contract between the Association and the Waialua Company and the rest of the members of the Association, as applicable both to the year 1946 and the year 1947, the Association was required to and did, in fact, pay over to its members, in direct proportion to the amounts of raw sugar delivered by the members to the Association, "all proceeds received by the Association from the

(Testimony of Raymond John O'Donnell.)

sale by it of refined sugar and of raw sugar and of any by-products produced by it, after deducting from said proceeds the operating expenses of the Association and the dividends paid by the Association on shares of its capital stock."

In each of those years 1946 and 1947 the Association paid dividends in the amount of $600,000 being 6% on the capital stock of the Association. These dividends were paid entirely to the members of the Association, including Waialua Company, these members being the sole stockholders of the California and Hawaiian Sugar Refining Corporation, Limited.

Now, that is the stipulation of facts which, Mr. Poole, as I understand it, is a correct statement of facts; is it not?

Mr. Poole: Except as you interpolated certain statements on your own.

Mr. Gladstein: Which ones?

Mr. Poole: With respect to the size and other matters. [64]

Mr. Gladstein: Oh, at one place I said the C & H is the largest refinery in the world. I had that from Mr. Jenks.

Mr. Jenks: I don't know that that is a fact.

Mr. Gladstein: Supposing we except that from the stipulation; is there anything else I said that was interpolated?

Mr. Poole: I don't think so.

Mr. Gladstein: So the rest of it is a true and correct statement, is it not?

(Testimony of Raymond John O'Donnell.)

Mr. Poole: I think that it is correct.

Mr. Gladstein: Now, your Honor, in support of my offer of proof, that is, my asking the Court to receive that stipulation of facts into evidence, let me point out that in other words this shows that the Waialua Company receives nothing for its raw sugar as such. It doesn't market raw sugar; it simply delivers over to this agency, which it, along with other companies, controls, all the raw sugar it produces, except for minor and inconsequential quantities. The raw sugar is refined, it is then sold in the world market, and the proceeds from the refined sugar represent the funds from which the Waialua gets its payment for the raw sugar that it produced. So that that is where it gets its money; that is how it makes its profits. And I certainly think that this is material and is a part of the facts which I feel the Ninth Circuit ought to have, as well as this Court. In any event, I don't see [65] any jury here, and I don't think this is a question of materiality. It is a question of the weight to be given to this evidence, and no jury is going to be prejudiced by having this evidence in the record. It is simply a question of the evaluation the Court may give to this evidence. The Court may decide it will give no value or weight to this evidence; on the other hand, it may decide it will give such weight as it feels ought to be accorded to it. But I don't think the evidence should be kept out on any technical ground of immateriality, and I urge the

(Testimony of Raymond John O'Donnell.)

Court to receive this stipulated statement of facts as evidence in the case.

Mr. Poole: I have just one further statement I should like to make, and I make it only in an effort to be helpful to the Court. What Mr. Gladstein, the attorney for the defense, has said now with respect to the admissibility of this evidence he said almost precisely last year with respect to the admissibility of the testimony of Jack Hall. He pointed out that we had no jury, that the evidence was being presented to your Honor, and that you of course could not be led astray by listening to this evidence. It went into the record. Not only that but other things. And the Ninth Circuit was highly critical of the admission of that testimony.

Now this, in my judgment is what the Ninth Circuit wants, and what I am reading from now—or, not going to read from, but going to point out—I think is noticeable throughout the [66] decision of the Ninth Circuit. They stated that what your Honor should find with respect to the facts, facts that they thought to be material and controlling was, first, the activities that the individual employees engaged in, work week by work week, the pay practices that were followed, overtime hours they refer to on several occasions, and then they want to know whether those activities were related to the agricultural exemption and how, that is, the particular activities that were engaged in and their particular relationship to interstate commerce. Now, I say that a reading of this opinion shows very clearly that the

(Testimony of Raymond John O'Donnell.)

type of thing the attorney for the defense is now trying to get into the record is irrelevant, and for that reason I urge that it not be permitted to come in.

Mr. Gladstein: I agree that the Ninth Circuit said it wanted detailed information concerning the activities of the employees. We are going to do that; we are going to have them here, and we have these summaries that show just how long they worked and what their work was. I don't understand the Ninth Circuit's opinion to indicate that that is all they wanted and they were excluding everything else. Inasmuch as it is the contention here of the Waialua Company that Waialua is a farmer and that everything it does consists of the practices of a farmer, I believe it is relevant and material to have in evidence just what its activities are on the question of interstate commerce, the extent to which it goes, and on the [67] question of the nature of those activities.

The Court: Well, it is quite difficult for me to know at this time what, if any materiality this matter may have now when the cards are all down. I can't say that it is wholly immaterial. I can't say that at this time. It will depend a good deal on what other matter comes in whether it would be affected by the stipulation of these facts. I will admit it in evidence.

Q. (By Mr. Gladstein): Now, Mr. O'Donnell, do you recall the questions that His Honor put to you concerning the distinction between capital

(Testimony of Raymond John O'Donnell.)

charge, or capital investment, on the one hand, and running expense on the other? A. Yes.

Q. Do your records show with respect, say, to Mr. Faria—would it be possible to tell whether he was working on a capital investment or on a running expense?

A. The record would show that, yes.

Mr. Gladstein: Well, in our stipulation we don't indicate, as I recall it, Mr. Poole, any such distinction. Am I right about that?

Mr. Jenks: Well, the stipulation will show what each employee did. Now, there are cases where an employee worked on the construction of a building. That is shown.

Mr. Gladstein: Yes.

Mr. Jenks: And I suppose that is a capital expenditure. [68]

Mr. Gladstein: Yes.

Mr. Jenks: But the accounting, whether it is a capital expenditure or a running expense is not specifically shown, and that is something the people might agree with. The tax office might not agree with Mr. O'Donnell. I don't see how it is related at all. We show what each one did.

Mr. Gladstein: Very well. [69]

* * *

Mr. Gladstein: Now, I have some of the defendants, if there is no objection, I would like to put on now.

Margaret Fujiwara, will you take the stand, please.

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Vol. II

TRANSCRIPT OF RECORD

(Pages 403 to 724)

Supreme Court of the United States

OCTOBER TERM, 1954

No. 357

CIRACO MANEJA, ANTONE VIERRA, TADAO WATANABE, ET AL., PETITIONERS,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED PETITIONER,

vs.

CIRACO MANEJA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1954

CERTIORARI GRANTED NOVEMBER 8, 1954

No. 13114

United States
Court of Appeals
For the Ninth Circuit.

WAIALUA AGRICULTURAL COMPANY, LIMITED, a Corporation,

Appellant.

vs.

CIRACO MANEJA, et al.,

Appellees.

Transcript of Record
In Two Volumes
Volume II
(Pages 403 to 719)

Appeal from the United States District Court for the District of Hawaii.

MARGARET FUJIWARA

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Gladstein:

Q. Your name is Margaret Fujiwara, and you are the Margaret Fujiwara who is named in this proceeding as a defendant and cross-claimant; that is correct, isn't it? A. Yes.

The Court: What is the name? [70]

Mr. Gladstein: Fujiwara.

Q. (By Mr. Gladstein): Have I pronounced it correctly? A. Yes.

Q. What is your address? Where do you live?

A. Waialua, Oahu.

Q. Waialua? A. That's right.

Q. And do live in the village?

A. In the village.

Q. And that is the plantation village, is it not?

A. Yes, sir.

Q. Yes. You live in one of the Company houses there, do you? A. That's right.

Q. Are you married or single? A. Single.

Q. You live there with your parents?

A. That's right.

Q. Are they also employees of the Company?

A. That's right.

Q. Yes. How long has your family lived in that particular house?

(Testimony of **Margaret Fujiwara.**)

A. I really don't know. Over thirty years, I think.

Q. How long?

A. Thirty years. Over thirty years. [71]

Q. As long as you can remember, in other words; is that right? A. That's right.

Q. How long have you worked for the Waialua Company? A. About twelve years.

Q. Twelve years. What is the title of your job?

A. Laboratory analyst.

Q. You know, I don't hear you, Miss Fujiwara. Your voice is gentle and sweet, but it is too soft for the attorneys to hear, and they have to hear you. Would you speak up, please.

A. I am a laboratory analyst, laboratory analyst.

Q. Laboratory analyst. When did you take that particular job? Well, let me put it this way: Were you working on that job all through the years 1946 and 1947? A. That's right.

Q. And you have continued to work at that since; is that right? A. That's right.

Q. Your job is sort of a split job; that is, during the season you work in the laboratory and then during the off season you work in the warehouse as a clerk sometimes, don't you? A. That's right.

Q. And was that true in 1946 and 1947?

A. That's right. [72]

Q. Yes. And when you worked at the warehouse at your clerking job, were you paid overtime after 40 hours of work in a work week? A. Yes.

(Testimony of Margaret Fujiwara.)

Q. And that overtime was at the rate of time and a half, was it not, of your straight time rate?

A. Yes.

Q. Yes. Now, with respect to your laboratory work did you work a regular shift during 1946 and 1947? A. I had my regular shift.

Q. You had a regular shift? A. Yes.

Q. And what were the hours of that shift? What time did you commence work?

A. Six-thirty in the morning until three o'clock.

Q. Until what? A. I mean 2:30.

Q. Six-thirty until 2:30? A. That's right.

Q. And you worked that shift regularly?

A. No, sometimes I start from 7.

Q. Sometimes you started at 7? A. Yes.

Q. But what I mean, you worked that day shift regularly is that right? [73] A. Yes.

Q. There was a night shift, too, was there not?

A. Yes, I did have.

Q. There was an employee on the night shift, but you didn't do that work, did you?

A. For instance, if a man laid off from night shift, I had to take their part.

Q. Sometimes you did work at night?

A. Yes.

Q. If there was an employee who laid off?

A. That's right.

Q. What kind of work, in the warehouse or laboratory? A. In the laboratory.

Q. Doing laboratory analysis?

(Testimony of Margaret Fujiwara.)

A. That's right.

Q. Yes. Now, as part of your work you typed up reports, didn't you? A. Yes.

Q. You analyzed the content of boiled sugar, did you? A. Yes.

Q. And these reports were for the records that the Company kept; is that right?

A. That's right.

Q. Did you send those direct to the Company or were they sent somewhere else? [74]

A. Somewhere else, too.

Q. Where else were they sent? To the HSPA?

A. HSPA.

Q. That is the Hawaiian Sugar Planters Association? A. That's right.

Q. Is that right? A. Yes.

Q. Now, the testing that you did, the laboratory testing and analysis, that was for the purpose of keeping a record, isn't that right, making a record?

A. Yes.

Q. You had nothing to do directly with processing of sugar in any way, did you? You didn't do any processing of sugar? A. No.

Q. You didn't work in the mill? A. No.

Q. If you laid off for a week or two weeks, the sugar processing went on just the same without you: isn't that so? A. That's right.

Q. And you didn't do any of your work out in the fields, did you? A. No.

Q. Now, among the tests that your work re-

(Testimony of Margaret Fujiwara.)

quired you to do, is it true that you had to, and did, analyze the domestic [75] water samples for village purposes? A. Yes.

Q. And that is drinking water for the Plantation employees who lived in the village town; isn't that right? A. Yes.

Q. That is the Plantation town; isn't that right?

A. Yes.

Q. And how often did you do that?

A. Once a week.

Q. Once each week. Did you analyze cane leaf samples? A. I just can't remember.

Q. You don't recall that. Well, do you remember during that period sending reports or information to the Pacific Chemical and Fertilizer Company concerning your analysis of cane leaf samples?

A. Well, sometimes when a man is laid off I used to do for them.

Q. You did that as a substitute job, in other words? A. Yes, sir.

Q. That company was the company that did the fertilization work for the Waialua Company; is that right? A. Yes.

Q. Did you ever analyze pump water samples?

A. Yes.

Q. You used to do that. And that is drinking water: [76] is that right?

A. Not all of them.

Q. All types of water, that is water used for all types of purposes? A. That's right.

(Testimony of Margaret Fujiwara.)

Q. Yes. In other words, that would be for boiler water, for drinking water? A. That's right.

Q. All water used for any purpose; is that right? A. Yes.

Q. And your work required you to, and you did, make analysis of those types of water each week; is that right? A. That's right.

Q. That included fire room water, did it?

A. Fire room.

Q. And well water samples?

A. That's right.

Q. Did you ever have occasion to test alcohol for its strength in regard to the Plantation hospital?

A. That is about once a year.

Q. That happened rarely? A. No.

Q. But you did have occasion to do it sometimes? A. Sometimes.

Q. Did your work require you, Miss Fujiwara, to mix [77] chemicals and reagents from time to time? A. Yes.

Q. You did that? A. Yes.

Q. And how regularly did you do that?

A. Oh, about once a month, I think.

Q. Now, concerning your pay, you didn't keep any records of how much you received from the Company, did you? A. No, I did not.

Q. But every month when you were paid in the year 1946 and in the year 1947 the Company provided you with a voucher which gave a breakdown that showed what your rate of pay was and how many hours of work you put in that whole period,

(Testimony of Margaret Fujiwara.)

week by week, and how much you got in overtime and what the deductions were, and so on; isn't that right? A. Yes.

Q. Now, did you always find that those computations, as they were given to you, were correct?

A. Yes.

Q. You never had occasion in 1946 or 1947 to go to the Company and say, "Look here, you made a mistake about something"? A. No.

Q. Did not. Now you recall that you were shown—Miss Fujiwara, you will have to bear with me here. Do you [78] remember the other day being shown a copy of a summary, that looked like this, with your name at the top, which gave explanatory notes concerning your work and then gave—here we are——

Mr. Gladstein: Begins at 638 of the stipulation, your Honor, and continues to and including 649.

Q. (Continuing): Which starts out on 638 giving your name and then your designation as laboratory employee-warehouse clerk, and then work week by work week, setting forth the number of hours each week that you worked, your rate of pay at that time, how much you received for overtime, when you did receive it, and so forth. A. Yes.

Q. And this was reviewed by you, and did you find it true and correct? A. That's right.

Q. And you are satisfied that this summary in all respects, including its description of your work and where you did it, is an accurate statement?

(Testimony of **Margaret Fujiwara.**)

A. That's right.

Q. And is it true, Miss Fujiwara, that the statement of the facts given here concerning the hours you worked and how much you received during all the period covered by these pages 638 to 649, inclusive, agrees with and coincides with your own recollection, or the best recollection that you [79] have; is that right, as far as you remember?

A. Maybe. I think so.

Q. You think so. In other words, when we went over this, you didn't find anything in here that seemed to you to be wrong or anything like that, did you? A. Not that I know.

Q. And it seemed to be correct as far as you remember; isn't that right? A. Yes.

Mr. Gladstein: I think that is all the examination I have of this witness. Any cross-examination?

Cross-Examination

By Mr. Poole:

Q. I have a few questions I would like to ask you. Now, these questions that I am going to ask you have to do only with a period of time running from November 20, 1946, to September 14, 1947. Now, during that time, as I understand it, you were an employee of the Waialua Agricultural Company. You worked—— A. Yes.

Q. You worked for the Company?

A. Yes.

Q. During that period of time?

A. That's right.

(Testimony of **Margaret Fujiwara.**)

Q. I think that you stated that among other duties you analyzed drinking water for the employees in the village. [80]

A. That is the domestic water.

Q. Yes. Now, I want to make sure that what you say now is correct with respect to that, because I am not so sure that it is supported by the records. What did you do when you made the analysis? Did you analyze it for the purpose of determining how much salt was in the water?

A. That's right, to see how salty the water is.

Q. Well, now, isn't it true that that analysis to determine salt content was made on irrigation water and not on drinking water?

A. That is the drinking water. That is not the irrigation water.

Mr. Gladstein: Could I hear the answer?

Mr. Poole: I didn't hear it either.

The Court: She said drinking water.

The Witness: That is the drinking water. It is not the irrigation water.

Q. (By Mr. Poole): It is not irrigation water. Did you say it was irrigation water or was not?

A. Not.

Q. Drinking water? A. Drinking water.

Q. What is the source of that drinking water?

A. Drinking water is from Pump 2.

Q. Pump? [81] A. Yes.

Q. Pump water? A. That's right.

Q. And is the pump water the same as artesian water? A. It is the well water.

(Testimony of Margaret Fujiwara.)

Q. Yes.

Mr. Poole: I will let the question stand.

The Court: Well water.

Mr. Poole: Well water.

The Court: I would understand that, unless there is some further explanation, that that means artesian.

Q. (By Mr. Poole): Are you sure, Miss Fujiwara, that you were doing this analysis work on drinking water back in 1946 and 1947?

A. Then, too.

Q. You think you were? A. Yes.

Q. When you prepared records, what did you do with them? Did you send them to the main office, or did you mail them out to other persons?

A. To each different supervisor's department, department heads.

Q. You sent them to a department head?

A. That's right.

Q. You never mailed them to anyone? [82]

A. No.

Q. Off the Plantation? A. No, I don't.

Q. Well, now, how do you know where those reports and records went after they were sent to the department heads?

A. The only reports that goes out is Pump 10-A, I think.

The Court: Is what?

Mr. Poole: Would you read that answer back?

(Answer read.)

(Testimony of Margaret Fujiwara.)

The Witness: The Board of Health Council checks with our way how we do it, whether it goes right or not.

Q. (By Mr. Poole): Well, now, you testified before that certain reports that you prepared were sent to the HSPA. A. That's right.

Q. Now, how do you know that they were sent to the HSPA? You said you sent them to the department head.

A. The HSPA—I mean, the water sample doesn't go to HSPA. The water sample goes to all department heads.

Q. I am not talking about water samples. Did you send any report yourself?

A. Not myself.

Q. To the HSPA? A. My boss does it.

Mr. Gladstein: Your boss did? [83]

The Witness: Yes.

Q. (By Mr. Poole): What report did he send?

A. That is the regular monthly report and weekly report.

Q. Weekly report?

A. That's right. Weekly report I don't think——

Q. What does that report include?

A. The grinding of the mill and how bag the sugar.

Q. It is a general report on the amount of sugar ground and processed? The amount of sugar cane ground and processed? A. That's right.

The Court: And its analysis?

The Witness: No, not the analysis.

(Testimony of Margaret Fujiwara.)

Q. (By Mr. Poole): There is nothing contained in it with respect to the analysis? A. No.

Q. Now, in the performance of your work during this period of time, how often did you go into the mill? Would you go in every day?

A. Every day.

Q. Every day? A. That's right.

Q. And possibly how many times a day would you go in? A. Four times.

Q. About four times a day?

A. That's right.

Q. You went into the mill? [84]

A. That's right.

Q. What did you go into the mill for?

A. To get a sugar sample.

Q. To get a sugar sample?

A. And a water sample.

Q. And a water sample? A. That's right.

Q. And what was the purpose of your analysis work on the water?

A. For instance, the water sample goes fire room and boiler water; to boiling house I goes there to pick up water sample for all different evaporators like pan water.

The Court: Evaporators.

Mr. Poole: Yes, I understand that.

The Witness: Evaporator.

Q. (By Mr. Poole): You analyzed that water to determine its salt content? A. Sugar.

Q. Sugar content?

A. That's right, for boiling house.

(Testimony of Margaret Fujiwara.)

Q. Let's go back to the boiler water. Why did you analyze the boiler water?

A. Boiler water, took analysis for the salt content.

Q. Salt content? A. That's right. [85]

Q. And in the other water that you analyzed?

A. To see if there is any sugar in it, sugar content.

Q. I see. To determine the sugar content?

A. That's right.

Q. And what department head did you report back to with respect to that analysis work?

A. Fire room and boiling house department, if there is any sugar or salt content.

Q. In other words, you had to keep the boiling house and the fire room heads advised at all times with respect to the content of salt in the boiling water, that is with respect to the boiling room?

A. That's right.

Q. And then, the sugar content in the water in the boiling house? A. That's right.

The Court: The water in the boiling house; is that the only test you made, just of the water in the boiling house?

The Witness: That's right.

The Court: As to its sugar content?

The Witness: That's right.

The Court: You had nothing to do with the analyzing as to the sugar content of the sugar, that is, the polarization? Did you do any polarization work?

(Testimony of Margaret Fujiwara.)

The Witness: No. [86]

The Court: Well, was that done in the same laboratory then?

The Witness: Yes. I do that all in the laboratory.

The Court: What?

The Witness: I do that all in the laboratory?

The Court: But somebody else did the polarization work?

The Witness: Yes.

The Court: You had nothing to do with that?

The Witness: That is, if they laid off from work, then I do it.

Mr. Gladstein: If they laid off from work, she did it.

The Court: If they laid off from work, you did it?

The Witness: Yes.

Mr. Gladstein: Are you through?

Mr. Poole: Yes.

Mr. Gladstein: I understand Mr. Poole is through. I have a couple of questions.

Redirect Examination

By Mr. Gladstein:

Q. Miss Fujiwara, I understood you to say on direct examination that you typed up regularly some reports that went to the HSPA? [87]

A. Yes.

Q. What was in those reports?

A. That will be daily report for month to month.

Q. Daily report for what? A. Monthly.

(Testimony of Margaret Fujiwara.)

Q. For the monthly report?

A. That's right.

Q. Yes, but what was in the daily report? What subject did you cover? Did you cover laboratory analysis of any kind?

A. No, not laboratory analysis.

Q. What did you cover? Inventory on sugar, and things like that? A. That's right.

Q. Where did your laboratory analysis go?

A. Laboratory analysis go in that weekly report.

Q. Went with the report?

A. That's right.

Q. So, in other words, the reports that you regularly typed up that included such things as the inventory, and so on, that went to HSPA, were accompanied by—that is, at the same time you also sent in these laboratory analyses; is that correct?

A. That's right.

Q. And that went to the HSPA?

A. That's right. [88]

Q. One more, maybe a couple more. During the years 1946 and 1947, as this summary shows that you went over and you have testified about, sometimes when you worked 48 hours in one week you received overtime for the 41st, second, third, fourth, fifth, sixth, seventh, and eighth hours, and sometimes when you worked 48 hours a week you just got straight time for the whole week; isn't that right? A. That's right.

Mr. Gladstein: Thank you. That is all.

The Court: What was your day off each week?

(Testimony of Margaret Fujiwara.)

The Witness: Sunday.

The Court: What?

The Witness: Sunday.

The Court: Sunday. But Saturday you worked eight hours?

The Witness: Straight eight hours.

Mr. Poole: I have one further question.

Recross-Examination

By Mr. Poole:

Q. I understood you to say that you sent a laboratory analysis, weekly analysis, laboratory summary, to the HSPA. Now, I want you to tell me again what you did each week with this laboratory analysis report. Whom did you give it to?

A. I type it and I give it to my boss and my boss gave it out. The way how he was saying that he was giving out to [89] some of the different plantations. The way I know——

Mr. Poole: Would you read that back, please.

(Answer read.)

Q. (By Mr. Poole): That is, you were told by your boss that he was sending a copy of the report to various plantations? A. That's right.

Q. I think you said before that it was sent to the HSPA?

The Court: Yes.

Mr. Gladstein: This isn't inconsistent.

The Court: Did you type the envelopes?

The Witness: No, I don't type the envelopes.

(Testimony of Margaret Fujiwara.)

The Court: Well, are the envelopes already typed—I mean, already printed with the address on them?

The Witness: I really don't know.

Q. (By Mr. Poole): Well, isn't it true, Miss Fujiwara, that you don't know of your own knowledge then whether this laboratory analysis record was sent to the HSPA? That is, you didn't mail it?

A. No, I did not. The only thing I do is just type it out and give it to the boss.

Mr. Gladstein: You prepared it for mailing?

The Witness: That's right. I was so curious, so I asked my boss what he do about it, and he told me that at [90] that time he used to send it out to different plantations and also I heard that he used to send it out to HSPA, too.

The Court: Well, you say you were curious and you asked him what he did?

The Witness: That's right.

The Court: And he told you what?

The Witness: That he send these out to different plantations, and also to HSPA.

Q. (By Mr. Poole): Are you sure that was being done in 1947 and 1946?

Mr. Gladstein: She just testified that that is what he told her. She prepared it for mailing and he told her where he mailed it, and if it isn't the fact, Mr. Poole can have somebody from the HSPA come in on it.

The Court: That is one way to overcome hearsay.

(Testimony of Margaret Fujiwara.)

Mr. Gladstein: That is all. Thank you.

(Witness excused.)

The Court: Well, then, without calling another witness, we had better call it a day.

Mr. Poole: I would like to have some further consideration about an agreement we entered into as to how long we would run on this case.

Mr. Gladstein: Could we go four hours tomorrow, Judge?

The Court: What? [91]

Mr. Gladstein: Would four hours be too long for your Honor tomorrow?

The Court: It would tomorrow because I made another appointment at 2 o'clock.

Mr. Gladstein: Today? Oh, tomorrow.

The Court: Yes. I would rather make the four hours today.

Mr. Poole: I should like to run this afternoon if we can, if it is agreeable.

The Court: All right.

Mr. Gladstein: Does your Honor want to have lunch and come back?

The Court: Do you want to come back at 2 o'clock?

Mr. Gladstein: Either 1:30 or 2, whichever suits your Honor's convenience. Two o'clock I understand Mr. Poole suggests, and it is all right with me.

Mr. Poole: Two o'clock.

The Court: All right, we will recess until 2 o'clock.

(Thereupon a recess was taken until 2:00 p.m.) [92]

* * *

Afternoon Session

Mr. Gladstein: If your Honor please, I'd like to call to the witness stand next Mr. Toshio Kashiwabara. Will you step up, please?

TOSHIO KASHIWABARA

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

Mr. Gladstein: Your Honor will find the stipulation of facts dealing with this employee commencing at page 707 of the stipulation and running to——

The Court: These excerpts that I have run to page 637, but go right ahead.

Mr. Gladstein: They are by way of illustration, and your Honor will find in the stipulation received in evidence identical pages with those which Mr. Jenks handed you by way of illustration. Now, in the case of this witness, Toshio Kashiwabara, your Honor will find the facts stipulated to on page commencing with 707 to and including 725.

The Court: How do you spell his name?

Mr. Gladstein: T-o-s-h-i-o, K-a-s-h-i-w-a-b-a-r-a. Is that right, sir?

The Witness: Yes.

(Testimony of Toshio Kashiwabara.)

By Mr. Gladstein:

Q. And your first name is Toshio?

A. Yes. [93]

Q. And you are the Toshio Kashiwabara who is the defendant and cross-complainant in this action, are you not? A. Yes.

Q. Where do you live? A. In Waialua.

Q. In the village itself? A. Yes.

Q. And how long have you lived there?

A. Well, about 26 years.

Q. And are you living in one of the houses owned by the Waialua Company? A. Yes, sir.

Q. And that is the same house in which you lived for 26 years? A. No, sir.

Q. Well, how long have you lived in the present house?

A. In the present house I'd say about 20 years.

Q. And prior to that time you lived in another house also owned by the company?

A. Yes, sir.

Q. Are there any other houses there in Waialua except the company-owned houses in which you could live? A. Yes.

Q. Are there some others?

A. Well, company-owned houses is where I [94] live.

Q. I say, are there any other houses to live in except the ones the company owns? A. No.

Q. Those are the only houses, is that right?

A. Yes.

(Testimony of Toshio Kashiwabara.)

Q. Now, how long have you worked for the company? A. 26 years.

Q. What is your present job with the company?

A. Well, I am journeyman plumber.

Q. Journeyman plumber? A. Yes.

Q. And in the year 1946 and the year '47, were you also a journeyman plumber for the company? I see you are hesitating. Did you become a journeyman plumber, a journeyman at some point along the line and prior to that time you were an assistant?

A. Right after the strike.

Q. Right after the strike you became a journeyman? A. Yes.

Q. Well, the strike ended just before November, 1946, didn't it? A. Yes.

Q. And the period covered by this case begins November 18, 1946, and goes into September, 1947?

A. Yes. [95]

Q. So during all that period covered by this case you were a journeyman plumber, is that right, sir?

A. Yes.

Q. Now, you recall I was out at the plantation last week and had a conference with you concerning these pages that I have just mentioned to the Judge which give a description of your work and the hours of work that you worked in each of the work weeks from November 18, 1946, to and including September 14, 1947, you recall that?

A. Yes.

Q. And you also remember that we went over

(Testimony of Toshio Kashiwabara.)

and you read and went over, I went over with you the explanatory notes that referred to the kind of work that you did, do you recall that?

A. Yes.

Q. Now, you told me at that time that you were satisfied that these statements were true and correct? A. Yes, sir.

Q. And is it your testimony now that these pages correctly state the number of hours per work week during that period that you worked? A. Yes.

Q. And your rate of pay? A. Yes.

Q. And what wages you received at that time, they [96] correctly state what you received, that is, these pages tell correctly how much you got, what your pay was? A. Yes. What was it?

Q. Well, it was $1.27 an hour for time, for a time, and then it was raised. A. Yes.

Q. But I mean the total pay check is correctly shown what you received? A. Yes.

Q. And when you received your pay every month you never had any occasion during that period to go back and complain about any inaccuracy or anything like that? A. No, sir.

Q. And your testimony now is that you are satisfied that the statement of your duties and what you did, as shown in these pages that I have referred to, 707 to 725, inclusive, correctly set forth what your duties were? A. Yes.

Q. Now, as a journeyman plumber, where did you do your work?

A. Well, practically in the plantation.

(Testimony of Toshio Kashiwabara.)

Q. Well, is it in the plumbing shop?

A. No, in and out.

Q. Did you do some of your work in the plumbing shop? A. Yes. [97]

Q. There was a plumbing shop especially for plumbers, wasn't there? A. Yes.

Q. And that was your central headquarters?

A. Yes.

Q. And you do some of your plumbing work there, is that right? A. Yes.

Q. And from time to time, as the record shows in this case that I have referred to, you went out whenever you were sent to do plumbing work?

A. Yes.

Q. That meant into the field, did it?

A. Yes.

Q. And into the mill?

A. Well, outside of the mill.

Q. Outside of the mill? On the mill building?

A. Yes.

Q. And, in other words, you did work on the building which is known as the mill and in which the sugar is processed? A. Yes.

Q. And did you work in maintaining any of the plumbing installations in the village plantation houses? A. Yes.

Q. As a part of your work during that period, sir, did [98] you also make repairs and maintain tools and machinery that was used in the mill?

A. Yes.

(Testimony of Toshio Kashiwabara.)

Q. Now, your work, of course, varied from week to week? That is to say, one week you might not have occasion to go in the mill at all, is that right?

A. No.

Q. And another week, why, most of your work might be in the mill, is that right?

A. Well, outside of the mill, of course.

Q. That is, the outside but in connection with the plumbing facilities or installations?

A. Yes.

Q. Of the mill itself, is that right? A. Yes

Q. Can you state how regularly during the time that we are talking about, November, 1946, to September, 1947, the dates that I have given you, how regularly you repaired or maintained parts of the mill building?

A. Well, I can't exactly recall.

Q. Would it be about every other week or so?

A. Averaged about every three weeks.

Q. Every three weeks? And were there weeks when portions of the plumbing installations of the mill building were brought to the plumbing shop for you to do plumbing work on and repair [99] work on? A. Yes.

Q. And, in other words, sometime during these work weeks you did your plumbing at the mill building on other occasions the work was brought to the plumbing shop and you did it in the plumbing shop, is that right? A. Yes.

Q. Let me ask you this: Is it true that practi-

(Testimony of Toshio Kashiwabara.)

cally every week during this period at some time you did some repairing or maintaining of tools and machinery that was used in or about the mill?

A. No.

Q. Not every week? A. No.

Q. How often did you do that?

A. I don't know exactly.

Mr. Poole: I object to what you are trying to do now, if I may say this to the Court; you are trying to dispute what is stated in the stipulation.

Mr. Gladstein: I didn't intend to do that.

Mr. Poole: You never did that type of work——

Mr. Jenks: Every time it was in the mill it shows what it is.

Mr. Gladstein: That wasn't what my question was.

Mr. Poole: We so understood it. [100]

Mr. Gladstein: I am now asking the witness concerning his repair and maintenance of tools, not of something in the mill.

Mr. Jenks: Whenever he repaired tools is shown.

Mr. Gladstein: All right.

Q. Now, there were work weeks during this period when you worked more than 40 hours a week, isn't that right? A. Yes.

Q. And those are shown in these pages I referred to, isn't that so? A. Yes.

Q. And when you worked more than 40 hours a week, did you receive overtime pay for the hours after 40 all the time? A. No.

(Testimony of Toshio Kashiwabara.)

Q. Didn't receive any at any time?

A. Well, just once, I recall, that's all.

Q. Once? How about during the off season, did you receive overtime? A. Just that once.

Q. Once during the off season? A. Yes.

Q. And during the grinding season you did not get overtime for the hours between 40 and 48, is that right? A. No.

Q. When you worked more than 48 hours you received time [101] and one-half for the hours after 48? A. Yes.

Mr. Gladstein: I think that's all, your Honor.

Cross-Examination

By Mr. Poole:

Q. Mr. Kashiwabara, I think you stated that you had been living in your present house for 20 years? A. Well, yes.

Q. No, in the present house, for 20 years you have been occupying your present house?

A. Yes.

Q. Now, do you know whether or not some of the employees at Waialua own their own house?

A. Yes.

Q. They do own their own?

A. Outside of the plantation.

Q. Yes. Now, is it possible for you, if you had the money, to own your own home and purchase your own home in the community, too?

A. Sure.

Q. It is? A. Yes.

(Testimony of Toshio Kashiwabara.)

Q. Is it also true that certain employees live over in Haleiwa and work for the plantation?

A. Yes. [102]

Q. Haleiwa, I think, is nearby, a nearby village? A. The old home, yes.

Q. So I wanted to have your understanding as to whether or not the employees were required as a part of their job to live on the plantation or whether they could live off the plantation if they wanted. A. No.

Q. They can live either place? A. Yes.

Q. Mr. Kashiwabara, can you recollect today what you did in any particular work week back in 1946 or '47? A. No.

Q. That is, you can't recall today what you did, we will say, the second week in July in 1947?

A. No, I don't.

Mr. Gladstein: Nobody could.

Mr. Poole: Nobody could, your Honor. And I just wanted to bring that fact out. This is in relation when you come down to the type of proof that was requested by the 9th Circuit, and it must come from the records and from other sources of information such as we indicated this morning.

Mr. Gladstein: I think that is clear, supported, however, and confirmed by the recollection of the employee.

The Court: There might be an isolated instance where someone could by reason of some other event recollect—— [103]

Mr. Poole: That's all.

(Testimony of Toshio Kashiwabara.)

Mr. Gladstein: I have a couple of questions I'd like to ask.

Redirect Examination

By Mr. Gladstein:

Q. You said to Mr. Poole that it is possible to buy and own your own home off the plantation if you have the money to do so, is that right?

A. Yes.

Q. And how many employees of the plantation that you know of have bought property and lived in their own home off the plantation? Do you know any, very many?

A. Personally I know some.

Q. Very few, isn't that so?

Mr. Poole: Your Honor, I don't want to object to Mr. Gladstein's form of questioning but he is going to force me to do it if he continues to attempt to put words into the mouth of the witness. Really it is the process of an examining attorney that is supposed to have the opportunity to ask leading questions, but every one of your questions is leading.

The Court: Well, it is all right if he is examining him on the stipulation there.

Mr. Gladstein: All right. I will withdraw that question.

The Court: Well, this is redirect as to a matter brought out on cross-examination. You can elicit information by [104] asking a question in a different form.

(Testimony of Toshio Kashiwabara.)

Mr. Gladstein: All right. I will ask this question:

Q. Before the strike in 1946, did you pay rent on the house? A. No.

Q. What was the arrangement by which you got the house?

A. We had perquisites for fuel; that includes kerosene, and hospital, and some other.

Q. And for the house? For the house itself?

A. Yes.

Q. Do I understand, then, that your occupation of the house before the 1946 strike, and the fuel that you obtained, and the hospital facilities, and so on, were all part of a thing called perquisites?

A. I think so.

Q. And that was a part of your wages, wasn't it? A. Yes.

Q. Now, after the strike there was a change made through the bargaining representatives of the employees and the company, isn't that right?

A. Yes.

Q. And after that the perquisites were converted into wages, weren't they? A. Yes.

Q. And beginning in November, 1946, you started to pay [105] rent for your house, didn't you, approximately then? A. Well, yes.

Q. And you started to pay rent for your house at that time? A. Yes.

Q. And did you buy your own fuel after that?

A. Yes.

(Testimony of Toshio Kashiwabara.)

Q. What about hospital, did you pay something for hospital? A. Yes, we pay.

Q. And did you have to pay for the other facilities that came to your house, like water?

A. Yes.

Q. And bathing? Now, is your place equipped with a bath tub or a shower?

A. Well, yes, we have.

Q. Now, wasn't there a community bath house?

A There was.

Q. And there is now?

A. Well, gradually they all taking it out.

Q. Well, gradually they are getting bath tubs in the houses, is that right? A. Yes.

Q. But in '46 and '47 there was this community bath house? [106] A. Yes.

Q And a charge was made, was it, to bathe in there? A. Yes.

Mr. Gladstein: I think that's all.

The Court: What about electricity?

Q. (By Mr. Gladstein): I didn't ask about electricity. Do you pay for that? A. Yes.

Q. And you had to since November, 1946?

A. Yes.

Q. But before November, 1946, before the 1946 strike, electricity was furnished you as a part of the perquisites or wages arrangement, is that right?

A. Yes.

Mr. Poole: Just one further question.

(Testimony of Toshio Kashiwabara.)

Recross-Examination

By Mr. Poole:

Q. You stated before that it would have been possible for you, had you had the money, to purchase the house off the plantation or approximately on the plantation. Now, it was also possible, was it not, for you to have rented a house or for other employees to have rented a house off the plantation and to have lived off the plantation? A. Yes.

Mr. Poole: That's all. [107]

Mr. Gladstein: Thank you, sir. You can step down. I will call Mr. Peter Holmberg next.

(Witness excused.)

PETER HOLMBERG

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Gladstein:

Q. Mr. Holmberg. where do you live?

A. Waialua.

The Court: How do you spell his name?

Mr. Gladstein: H-ol-m-b-e-r-g. And the first name is Peter, is that right?

The Witness: Yes.

Q. And you are the Peter Holmberg who is one of the defendants and a cross-complainant in this case, is that right? A. Yes.

(Testimony of Peter Holmberg.)

Q. How long have you worked for the Waialua Company? A. 23 years.

Q. What is your present job?

A. Locomotive engineer.

Q. How long have you held that job?

A. For 22, about 22 years.

Q. And as a locomotive engineer, do you perform the usual duties and work of the man who is the engineer in and operates a regular [108] locomotive? A. You mean——

Q. A steam locomotive?

A. A steam locomotive, yes.

Q. Now, that is a narrow gauge railway that the company has, isn't that right?

A. It is a three feet gauge, the same as the Oahu Railroad.

Q. Same as the Oahu Railroad, a three-foot gauge? A. Yes.

Q. And you have operated the locomotives on that permanent line, is that right?

A. That's right.

Q. Now, Mr. Holmberg, I want to show you a group of pages in a stipulation entered here commencing at page 239 and ending at 259, inclusive. A copy of this summary of your hours of work, wages, rates of pay, overtime if any received, and description of your duties, as shown here, was shown to you last week, isn't that right?

A. Yes.

Q. And you reviewed it, did you not?

A. Yes.

(Testimony of Peter Holmberg.)

Q. And at that time is it true that you expressed your satisfaction with the correctness and accuracy of the statements contained in it?

A. Yes, sir. [109]

Q. And is it your testimony now that the number of hours shown as having been worked by you week by week during the period covered in these pages is accurate? A. That's right.

Q. And is in accordance with your best recollection? A. That's right.

Q. You didn't keep any particular records of your own, did you? A. No.

Q. And did you ever have occasion when you received you pay check during that period to look at it and complain to the company that it was in error in any way? A. No, sir.

Q. You did not? And with respect to the amount of wages and the rate of pay that was paid, in the two computations shown there, it is your testimony, as I understand it, is it, that those are accurately set forth in these pages?

A. Yes, sir.

Q. And also the description of the duties performed during that period? A. Yes.

Q. Now, did you work a particular shift or did your shifts shift? A. We had shifts.

Q. And would you tell me just very briefly something [110] about that?

A. Well, we start, the starting shift is 2 o'clock on Sunday, 2 to 10, and 10 to 6, and 6 to 2. Then

(Testimony of Peter Holmberg.)

there is a yard shift. That is the shift that is used to haul all the sugar and freight down to——

Q. Is this during the grinding season?

A. Yes, sir.

Q. In other words, you have these three shifts during the grinding season, is that right?

A. Yes.

Q. And did you work a particular shift regularly and uniformly during the period covered in this case? A. No, sir.

Q. In other words, you had been shifted around from one shift to another as the occasion arose?

A. Every week.

Q. Every week? A. It is a routine shift.

Q. Now, during the off season when the mill was not grinding, did you have a uniform shift?

A. Yes.

Q. You worked one particular shift then?

A. During the day shift.

Q. And that was the day shift? From what hours? What were the hours? [111]

A. Well, it depends when the plantation would start, sometimes 6:30 and sometimes 7 o'clock.

Q. Well, if it was 6:30 when would you quit?

A. Three o'clock.

Q. If it was at 6 you'd quit at 2:30?

A. Yes, sir.

Q. And if it was at 7, you'd quit at 3:30? But that was the only variation? A. Yes, sir.

Q. So during the grinding season, during this

(Testimony of Peter Holmberg.)

period of November, 1946, and September, 1947, there was that one shift only that you worked during the hours you have indicated?

A. Yes, sir.

Q. Excuse me. I meant during the off season.

A. Yes.

Q. You so understood that last question, didn't you? Whereas in the grinding season, which is the long season, you had these three shifts and you were shifted around from one to another?

A. Yes, sir.

Q. Now, during the grinding season essentially your main job, your principal job was to drive the locomotive, isn't that right? A. Yes, sir.

Q. During the off season did you have occasion to work [112] in the repair shop?

A. Yes, we always do.

Q. You always did? A. Yes.

Q. What repair shop?

A. Sometimes in the machine shop, sometimes at the round house where we do locomotive repairs, round house.

Q. Is there a locomotive repair shop or is the round house called that?

A. It is the round house.

Q. In which the locomotive repairs are done?

A. But there is a shop down at the machine shop where they do the repairs also. That is the main place.

Q. I see. Now, during that period, 1946-1947,

(Testimony of Peter Holmberg.)

when you operated these locomotives, is it true, sir, that you drove these trains into the fields to pick up cane? That was part of your work, wasn't it?

A. To a certain part of the field.

Q. What part of the field?

A. Well, as far as the main line goes.

Q. To the end of the main line, is that right?

A. Yes.

Q. And then the portable tracks would be connected with the main line at some point, is that so?

A. Yes. [113]

Q. And your locomotive was never driven on the portable tracks, was it? A. No.

Q. Did you during this period have occasion to drive your locomotive and trains, operate your locomotive for the purpose of driving trains to the connecting main line of the O. R. and L.?

A. Yes, sir.

Q. You did? How often did you do that?

A. Well, one whole week, about a week in every month.

Q. About one week in every month?

A. Yes.

Q. And what did you do in that regard?

A. Haul freight, freight from the station down to the mill and sugar back to the station.

Q. Did you deliver box cars loaded with sugar or tank cars loaded with molasses to the O. R. and L.? A. Molasses sugar and some freight.

Q. Is that right? A. Yes.

Q. And some freight? A. Yes.

(Testimony of Peter Holmberg.)

Q. What kind of freight, can you recall?

A. Well, it would be all kinds of stuff that we had been sending down to Honolulu. [114]

Q. I see.

The Court: Sending to Honolulu?

The Witness: Yes, from Waialua to Honolulu, and from Honolulu to Waialua.

Q. And in turn at the main line of the O. R. and L. did you during the period covered in this case pick up either empty box cars on occasions——

A. Yes, sir.

Q. ——and did you pick up any box cars that were loaded? A. Yes.

Q. With what? A. Freight.

Q. Supplies, things like that? A. Yes, all.

The Court: You brought O. R. and L. box cars up to where, to the mill?

The Witness: To the mill.

The Court: Both empties and loaded?

The Witness: Both empties and loaded.

Q. And when they were loaded did they contain materials or equipment for any of the operations of the company? A. Yes, sir.

Q. Could you give us some examples?

A. Well, it would be acid, lumber, all kinds of stuff.

Q. Practically everything that the company has occasion [115] to use?

A. That's right. Mill rollers and gears.

Q. In other words, supplies, materials and equipment? A. That's right.

(Testimony of Peter Holmberg.)

Q. Of every kind?

The Court: Fertilizer?

The Witness: Fertilizer.

The Court: Did you bring up provisions, groceries and feed either for sale to outside people or individual customers through stores of any kind?

The Witness: Yes, we hauled store freight also.

The Court: You mean plantation store?

The Witness: Plantation store.

The Court: Anything for private owners?

The Witness: Yes, sir.

The Court: Private stores?

The Witness: No private stores, just cattle cars for private owners.

Q. For private owners? A. Yes.

Q. Now, during this period covered by this case, there were times when you worked many hours more than 40 in a particular week, work week, isn't that right? A. That's right, sir.

The Court: Is that cattle cars for shipment over the [116] O. R. and L.?

The Witness: Yes.

The Court: Of livestock?

The Witness: Yes.

Q. Sometimes you worked as many as 64 hours in a week, isn't that so?

A. Yes, there's times.

Q. And during those weeks did you get overtime for the hours between 40 and 48 or did you get straight time?

(Testimony of Peter Holmberg.)

A. Well, when we were in the yard engine we were getting 40 hours a week.

Q. When you were what?

A. On the yard engine, that is, the freight engine. When we take that shift there we had 40 hours a week, and everything over 40 hours was overtime.

Q. That is when you were hauling to and from the O. R. and L.?

A. Yes, that particular week.

Q. And what about during the off season, did you get overtime after 40 hours a week in the off season? A. No, unless so——

Q. Unless you were doing that work?

A. That freight work.

Q. And otherwise, even though you worked 64 hours a week, you got straight time for the first 48 hours in the week, [117] is that right, for your work, is that right? A. Yes, sir.

Q. Did you ever have occasion to do any work in the field or in connection with the field or agricultural operations in any way in your work on your job?

A. Well, sometimes we would go out but I don't recall on that particular year.

Q. Your job is to operate a locomotive, isn't that right? A. That's right.

Q. You are an engineer, aren't you?

A. Yes.

Q. Where did you receive your training? Where did you learn your trade? A. At Waialua.

(Testimony of Peter Holmberg.)

Q. You worked your way up and learned the trade there? A. Yes.

Q. In the locomotive shop and in the round house?

A. Right. Started in the round house, yes.

Mr. Gladstein: That's all.

Cross-Examination

By Mr. Poole:

Q. Mr. Holmberg, you testified I think with respect to certain duties that you performed during the so-called off season? A. Yes. [118]

Q. Now, it is true, is it not, that there is an off season each year? A. Yes, sir.

Q. And during that season the mill is not grinding any cane? A. That's right.

Q. And that season is primarily for the purpose of repairing and reconditioning the mill?

A. Yes, sir.

Q. All right. Do you recall the dates when the off season occurred in 1946 and 1947?

A. No, I don't.

Q. You do not? A. No.

Q. Well, if you don't recall when the off season occurred, can you say with any definiteness what you did during those two years, during the off season? Now, as a matter of fact, I happen to know because we have an agreed statement of facts here that there was an off season which ran from December, some time in December, up to February, from 1946 up to 1947. Now, do you know what

(Testimony of Peter Holmberg.)

duties you performed in any work week during that period, any particular work week, if we are to identify it by calendar?

A. I couldn't tell you any week. But I could say that I did some shop work and also driven engines once in a while. [119]

Q. That is, you have a general recollection that you probably did some shop work? A. Yes.

Q. And by shop work you mean some repair work in the round house and in the machine shop?

A. Yes, sir.

Q. And in addition to that, you may have also driven the locomotive? A. Yes, sir.

Q. But you don't know during that period whether you were engaged in yard work or whether you were out on the main line work?

A. Usually on yard work. When we are on the off season we are in yard work.

Q. In yard work?

A. Yes, doing all the—not sugar but you have this other stuff, freight, that always comes out.

Q. You spoke here about private cattle cars coming into Waialua? A. Yes.

Q. And do you know as a fact whether during this period of time, that is, the period of time covered by the suit, which is from November 20, 1946, to September 14, 1947, whether you hauled any private cattle cars?

A. I couldn't tell you for sure. [120]

Q. You couldn't tell during that period of time?

A. No.

(Testimony of Peter Holmberg.)

Q. You get time and one-half for all hours worked in excess of 8 a day? A. Yes.

Q. And was it true that during this period of time that I have referred to that you also received time and one-half for all hours worked over 40 where you engaged in hauling raw sugar?

A. Yes, sir.

Q. And molasses? A. Yes.

Q. From the mill out to the O. R. and L. line?

A. Yes, sir.

Q. And also in bringing back various merchandise which the plantation may have and which you were receiving from the O. R. and L.?

A. Yes.

Redirect Examination

By Mr. Gladstein:

Q. Had a year ever passed when you didn't have occasion to haul cattle cars or do you do it every year? A. We don't do it now.

Q. You used to?

The Court: Well, there is no Oahu Railroad running now. [121]

The Witness: No, sir.

Mr. Gladstein: That's all.

Mr. Poole: Well, there is nothing in the record to show that they did it during this period of time. It had been discontinued apparently.

(Witness excused.)

Mr. Gladstein: Call next Mr. Tsuruo Hayashi.

TSURUO HAYASHI

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Gladstein:

Q. You are the Tsuruo Hayashi who is named in this case as a defendant and cross-complainant, aren't you? A. Yes, sir.

Q. And where do you live?

A. Waialua.

Q. And you say you live at Waialua?

A. Yes, sir.

Q. How long have you lived there?

A. About 25 years.

Q. 25 years? And during all that time have you worked for the company? A. Yes, sir.

Q. And you live in one of the company homes, do you? A. Yes. [122]

Q. Now, what is your job with the company?

A. Crane operator.

Q. Is that also known as a cane-loading machine?

A. Yes.

Q. How long have you had that job?

A. Ever since the company run the machine.

Q. Ever since they started using such a machine?

A. Yes.

Q. And do you recall approximately when they started? About when did they start using that machine? A. I don't know exactly when.

Q. Well, about when? Was it some years ago, something like that? A. 15 years.

(Testimony of Tsuruo Hayashi.)

Q. 15 years ago? Now, in 1946 and 1947 you were operating that machine, is that right?

A. Yes.

Q. And you were then a cane-loading machine operator, a crane operator, is that right?

A. Yes.

Q. That is correct, is it? A. Yes.

Q. Now, you remember my coming out last week to see you and showing you the pages of this stipulation or copies, exact copies of these, beginning with page 181 of the [123] stipulation and running to and including 199; do you remember our going over those? A. Yes.

Q. And you understood what was in here, did you? A. Yes.

Q. You yourself don't remember exactly how many hours you worked in a particular week 'way back in 1946, do you? You wouldn't remember that?

A. No.

Q. Did you keep any records? A. No, sir.

Q. Now, during that time in 1946 and 1947, whenever you got your pay you examined your pay checks, and so on, didn't you? A. Yes.

Q. All right. Did you ever find any mistakes and go to the company and tell them they made a mistake in any way? A. No.

Q. All right. You are satisfied, are you, that the statements in these pages that I have just enumerated concerning the number of hours you worked in each of those weeks is correct, is that right?

A. Yes.

(Testimony of Tsuruo Hayashi.)

Q. And as far as your best memory is concerned, they seem all right and correct to you, is that right? [124] A. Yes.

Q. And is that true also about the rate of pay that you were receiving at that time?

A. Yes.

Q. Is that correct in here? A. Yes.

Q. And the wages that you received?

A. Yes.

Q. And the description of the job that you did during that period, is that right? A. Yes.

Q. Now, principally your work was out in the fields loading the cane itself, isn't that right?

A. Yes.

Q. Is that right? A. Yes.

Q. But there were times when you did repair work on those machines or other machines, isn't that right? A. Yes.

Q. And those times are shown in these pages that I just showed you, isn't that so? A. Yes.

Q. Where did you perform those repairs? Where were you? In which building did you make the repairs to the crane?

A. In the P and H. [125]

Q. You call it P and H?

A. Yes, P and H shop.

Q. And that refers to the name——

Mr. Poole: The inventor or manufacturer of the machine that refers to.

Mr. Gladstein: As P and H?

The Court: PNH or P and H?

(Testimony of Tsuruo Hayashi.)

Mr. Poole: It is P and H.

Mr. O'Donnell: Pauling and Hoffschlaeger.

Q. (By Mr. Gladstein): And so the men call that shop the P and H shop, is that right?

A. Yes.

Q. Now, when you made the repairs to these cranes it was in that shop, the P and H shop?

A. Yes.

The Court: Did you make any repairs in the field?

The Witness: Yes, when it break down we fix in the field.

Q. You do fix it in the field whenever you are able to do it, is that right? A. Yes.

Q. You yourself have done that? A. Yes.

Q. Now, if the breakdown cannot be repaired in the [126] field, then you take it to the shop, I suppose, is that right? A. Yes.

Q. And have you done repair work in any shop other than the P and H shop? Did you ever go to the welding shop? A. Yes, sir.

Q. You have worked in the welding shop?

A. Yes.

The Court: Paint shop? Paint shop?

The Witness: No, welding shop.

Q. You didn't work in the paint shop? Did you work in the paint shop?

A. I don't exactly remember.

Q. You don't exactly remember that? But you do remember working in the welding shop in regard

(Testimony of Tsuruo Hayashu.)

to repairing or welding parts of some machinery, is that right? A. Yes.

Q. What kind—let me ask you this——

The Court: Well, did you do the welding or just take the machine to the welding shop to have the welding done?

The Witness: Yes.

The Court: What?

Q. Which did you do? A. Take it down.

Q. Did you help the welder?

A. Yes. [127]

Q. How did you help the welder?

A. In other words, helping the welders.

Q. You did help the welder? How did you help him? What did you do?

A. Supply the equipment.

Q. Supply the equipment to him?

A. Yes.

Q. As he needed it, as he wanted to use it?

The Court: Held it in place? Held it in place?

The Witness: Yes.

Q. You acted as a helper for him, did you?

A. Yes.

The Court: Well, you didn't take the whole machine there? You took the parts that needed welding, is that it?

The Witness: What we can handle, we take it down.

Q. Did you ever repair the machine without any help from anybody else? A. I did.

Q. You have done it yourself? A. Yes.

(Testimony of Tsuruo Hayashi.)

Q. Now, during the off season there is no cane-loading and you don't operate that machine, isn't that right? A. Yes.

Q. And what did you do during this period 1946 and '47 during that off season? What work did you do? [128] A. Repairing the machine.

Q. Repairing machines? A. Yes.

Q. What kind of machines?

A. The cane-loading machine.

Q. Did you ever work during that period on any other kind of machine? It is hard to remember?

A. Yes, sir.

Q. You are not sure, is that it, whether you worked on any other type of machine? Well, let me ask you this: Were you qualified, did you know how to repair other machines besides this cane-loading machine? A. Yes.

Q. You did? And there were times when you did repair other types of machines than this crane?

The Court: Automobiles, trucks?

The Witness: No trucks.

Q. Well, can you name any other machine? Don't you remember?

The Court: He doesn't seem to have any memory of that.

Mr. Gladstein: I beg your pardon?

The Court: He doesn't seem to have a memory of that.

Mr. Gladstein: I will go to another question.

Q. Now, there were many times during this

(Testimony of Tsuruo Hayashi.)

period when you worked around 55 hours in a week, isn't that right? [129] A. Yes.

Q. Did you receive overtime for any hours up to 48 in a work week or did you receive just straight time? A. Received straight time.

Q. And your overtime began after you worked 48 hours, is that right? A. Yes.

Q. And if you have overtime coming to you for the hours between 40 and 48, that could be picked out from the hours in these pages that I showed you, is that right? A. Yes.

Mr. Gladstein: That's all, Mr. Poole.

The Court: Now, that covers, your question covers both the harvesting season and off season?

Mr. Gladstein: Yes, yes.

Cross-Examination

By Mr. Poole:

Q. Mr. Hayashi, I want to speak to you a little about the P and H shop. This P and H shop that you were talking about, I think that the plantation more often refers to that as the cane-loading machine shop. Now, as I understand it from your testimony, you helped repair cane-loading machines in that shop? You helped repair them? You helped fix them up if they were broken?

A. Well, we call it overhaul. [130]

Q. Overhaul it? A. Yes.

Q. Well, that's fine. You helped overhaul it? Now, isn't it true that that shop also has a welding

(Testimony of Tsuruo Hayashi.)

shop, welding facilities in it? You can do welding right in that shop? A. Yes.

Q. And that is where the welding takes place, where welding is required?

The Court: There is no separate welding shop?

Mr. Poole: Your Honor, the welding with respect to the repair of cane-loading machines apparently took place in the cane-loading repair shop.

The Court: Well, there is light welding and heavy welding, of course. I rather assume in the absence of anything to the contrary that it might be some heavy welding that would have to go to the shop with the heavier welding capacity.

Mr. Poole: Well, it is my understanding, your Honor, that—and I think this may be borne out or not by the stipulation—that all the welding required to maintain and keep overhauled these cane-loading machines is contained in the cane-loading machine shop. They have their own welding equipment.

The Court: Sometimes in the welding shop. Now, whether he means that is the general repair shop for cranes or whether he means it as a separate welding shop, I wouldn't know.

Mr. Poole: Well, I think that he has answered. I will [131] ask him again if we can elicit that information.

Q. Mr. Hayashi,when it was necessary to mend a broken piece of machinery, of a cane-loading machine, where you had to do a welding job, weld two pieces together, was that noramlly welded right

(Testimony of Tsuruo Hayashi.)

in the P and H shop in one part of the shop there that did welding or did you take it out of that shop and take it to another shop? A. Yes.

Q. Which did you do? A. We do send up.

Q. Sometimes you took it out?

A. Yes, to different shop.

Q. And sometimes you did it in the shop?

A. Yes.

Q. How long have you been doing repair work in the P and H shop as you refer to it?

A. I don't know exactly. Not very often.

Q. Not very often?

Mr. Gladstein: How long, he asked you?

The Witness: I don't know exactly.

Mr. Gladstein: How long ago? When did you first start?

Q. (By Mr. Poole): How many times a year do you go in there and do work?

A. Just one time off season.

Q. One time in the off season? Well, now, I want you [132] to think hard. The period that we are having this lawsuit over is a period that runs from November 20, 1946, to September 14, 1947. Now, during that period of time do you recall ever going in to help on repair work in this so-called P and H repair shop? You don't recall?

Mr. Poole: Well, if your Honor thinks that it is material as to whether or not—it seems to me that it is not.

The Court: No, it is not material. The question may be raised later as to the materiality.

(Testimony of Tsuruo Hayashi.)

Mr. Poole: But how can it make any difference whether the work is done in one shop or another?

The Court: Well, I don't know. I was about to ask the witness, intended to ask him if he himself was a welder. You know how to weld? You do it yourself?

The Witness: No.

The Court: You only help somebody else weld?

The Witness: Yes.

The Court: Now, most of the welding, any ordinary break, you do that in the place where the crane is generally repaired?

The Witness: Yes.

The Court: Overhauled?

The Witness: Yes.

The Court: I suppose you got big jobs sometimes? You have? [133]

The Witness: Yes, we have.

The Court: Too big for the small welding equipment in the repair shop?

The Witness: We take him down to the shop.

The Court: You take it out?

The Witness: Yes.

Mr. Poole: Your Honor, I understand that is not a fact. We will have to put a witness on, because they have full welding machinery and have that, and it is a P and H machine and they do all their welding there. I guess we will have to call a witness.

The Court: All right.

Mr. Poole: But I can't see for the purposes of the activities of this particular employee——

The Court: I don't either.

(Testimony of Tsuruo Hayashi.)

Mr. Poole: ——whether he is under the Act or not, as to which shop he worked in or not.

The Court: Well, the different type of work he does and the overhaul, and so forth, the main thing is that he does overhauling and repairing.

Mr. Poole: That's right. I would agree with you. And I don't care whether it is slight or extreme, I still think it is in the same category.

The Court: What he does in any event is to assist in the welding of the parts that he wants welded. [134]

Mr. Poole: Yes.

The Court: And whether he stands by and does that in one shop or another, I can't see.

Mr. Poole: I don't think it makes any difference. I would like to ask him just one more question, because there seems to be a difference of opinion here between what he tried to tell you and what the management understands to be the fact.

Q. (By Mr. Poole): Do you recall any particular work week, any week during the past few years when you went in yourself into the welding shop out at Waialua and helped do some welding? And if you do remember such a work week, when was it?

Mr. Gladstein: You want the exact date?

Mr. Poole: No, I just want him to indicate generally.

Mr. Gladstein: Do you remember that?

The Witness: No.

Mr. Gladstein: He can't remember. I have one question.

(Testimony of Tsuruo Hayashi.)

Redirect Examination

By Mr. Gladstein:

Q. You said that you went into the welding shop or repair shop once. Now, during the off season you went in that repair shop and worked there throughout the off season, didn't you, all through it, didn't you? When you say "once" you don't mean just one day, do you? A. No. [135]

Q. What do you mean by once? You mean for some period of time you started to work there and you worked there for quite awhile during the off season?

A. Stop and then used to work again.

Q. All right.

The Court: Well, was there always during the off season when your machine wasn't working in the field, was there always repair work to do on your machine or other machines of the same kind in the repair shop that took all your working time during that off season, or were you sent some place else to help work during the off season? You understand what I say?

The Witness: Yes, we do help.

The Court: What's that?

The Witness: Sometimes we do it.

The Court: Sometimes you do what?

The Witness: Help.

The Court: Outside?

The Witness: Yes.

(Testimony of Tsuruo Hayashi.)

The Court: No machine, no crane to repair: some other work?

The Witness: Yes.

The Court: You go out and do other work, not crane repairing?

The Witness: We do some other job and come back to the crane. [136]

Q. (By Mr. Gladstein): During the off season your main work was in that crane repair shop and you worked on cranes mainly, most of the time, is that right? A. Yes.

Mr. Gladstein: All right.

Mr. Poole: The stipulation very carefully shows the various activities that this witness engaged in each work week. And whenever he went out of it, the crane-loading shop, if that was his principal duty during the off season it will be shown precisely what he did. And I can show it to your Honor now, if you are interested in seeing how it is set up.

The Court: If there is no disagreement about that, well——

Mr. Gladstein: We agree that the stipulation shows what kind of work he did and where. There is no question about that.

The Court: All right. Let's go ahead.

Mr. Gladstein: Do you have any further questions?

Mr. Poole: No.

(Witness excused.)

AUGUSTINE LORENZO

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Gladstein:

Q. Mr. Lorenzo, you are the Augustine Lorenzo who is [137] a party in this case, is that right?

A. Yes.

Q. And where do you live? A. Waialua.

Q. How long have you lived there?

A. Oh, since 1936.

Q. Since 1936? And you have worked for the company during all that time? A. Yes.

Q. And you live in one of the company houses?

A. Yes.

Q. In the village? A. Yes, I do.

The Court: Since what time?

Mr. Gladstein: 1936, your Honor.

Q. What is your job with the company?

A. They call it water tender.

Q. Water tender? Is it also known as water supply ditchman? A. Yes.

Q. Did you occupy that job in 1946 and 1947?

A. Yes.

Q. Now, the other day you were called to examine a summary of your work, of the number of hours you worked and your rate of pay, and the wages you received, and a description of [138] the work that you performed. You will find that, your Honor, on page 124 of the stipulation to and includ-

(Testimony of **Augustine Lorenzo.**)

ing page 135. You remember going through this, do you? A. Yes.

Q. And examining this now, are you satisfied that this correctly sets forth the number of hours that you worked during those weeks?

A. Yes.

Q. You didn't keep records of your own, did you? A. No.

Q. And it is impossible for you to remember now exactly how many hours you worked in some week back in 1946, is it? A. Yes.

Q. But does this summary of the hours you worked, does that seem to you, does that appear to you to be about right? A. Yes, just about.

Q. And does this summary also correctly set forth the rate of pay that you received at that time? A. Yes.

Q. And the amount of wages that you received?

A. Yes.

Q. And does it correctly set forth the work that you did during that time? A. Yes.

Q. Essentially what you did was—I will withdraw that. [139]

The Court: Well, I think you ought to follow that up. Now, water supply ditchman or water tender doesn't mean too much to me.

Mr. Gladstein: All right, I will ask the witness.

Q. What in general did your work consist of? What did you do in your job?

A. Well, my job is always receive an order from

(Testimony of **Augustine Lorenzo.**)

the other section, pass on to me, to water company. I mean deliver water, whatever they need in the other section, they send me to my place, and then from my place I telephone to water company.

Q. To the water company? And you deliver an order to them? A. Yes.

Q. And tell them how much water is needed?

A. Yes.

Q. In a particular section? A. Yes.

Q. Give me an illustration, if you will, of what such an order looks like or sounds like?

A. Sounds like? They call the Kawailoa section, they want 25 million for tomorrow morning.

Q. 25 million what? A. Gallons of water.

Q. Yes.

A. And Halemanu section wants another 10 million gallons [140] of water, and Kemoo section another 10 million gallons of water.

Q. Now, such orders were telephoned in to you?

A. Yes.

Q. That was true?

The Court: Telephoned to you or telephoned out to the water company by you?

The Witness: Telephoned to me by the overseers department head.

Q. And then you telephoned out?

A. To the water company.

Q. You telephoned to the water company?

A. Yes.

Q. Which water company was that?

A. Wahiawa Water Company.

(Testimony of Augustine Lorenzo.)

Q. Wahiawa Water Company? A. Yes.

Q. And you told them how many gallons of water would be wanted and needed the next day in a particular section, is that right? A. Yes.

Q. And is that what your work consisted of?

A. That's right.

Q. Now, that water was used—do you know what that water was used for?

A. Used for irrigation. [141]

Q. And a part of it was used as boiler water for locomotives used on the plantation railroads?

A. Yes, part of it.

Q. There were times when you worked—well, that is all covered as to where the place is located, and so forth. There were times when you worked long hours in a week? You worked 68 hours and 56 hours in a week, and so forth, didn't you?

A. Yes.

Q. When you worked those hours, did you receive straight time pay for the first 48 hours?

A. I believe I was compensated for my overtime just on Sundays and holidays.

Q. In other words, your work on Monday, Tuesday, Wednesday, Thursday, Friday and Saturday, you worked 8 hours on each of those days, making 48 hours, and during that time you only got straight time for those? A. Yes.

Q. And after 48 hours you'd get overtime, is that right? A. Yes.

Q. And there were times when you worked more

(Testimony of Augustine Lorenzo.)

than 56 hours in a week? You worked over 60 hours in a week, isn't that right? A. Yes.

Q. Now, are you satisfied that the amount of overtime you have coming, if you have any coming at all, can be figured out correctly from these pages of the stipulation that I showed [142] you that are here in evidence?

A. I am not so sure that my time on Monday to Saturday compensated overtime.

Q. You are not sure about that? What do you mean by that?

A. On the time of Monday to Saturday. I mean the time that was overtime is only just Sunday and holidays; they call it overtime.

Q. Well, I agree with you. We are trying to get overtime for you here, as you know. But the question is whether it can be figured out from this, from these. A. I believe so.

The Court: What I understand him to say is, he is satisfied that the overtime given him on Saturdays and Sundays is correct but he isn't so sure but what on these other days he had some overtime coming.

Mr. Gladstein: Well, your Honor, I think he said he is satisfied about the Sundays and holidays.

The Court: Yes.

Mr. Gladstein: Your Honor said Saturdays and Sundays.

The Court: Yes.

Mr. Gladstein: Your Honor, so far as the other days, you said, he is not so sure about that. Well,

(Testimony of Augustine Lorenzo.)

that will appear here. I haven't any further questions. Do you have any questions, any further questions? [143]

Mr. Jenks: Where do you get the 60 hours?

Mr. Gladstein: Aren't there 60 hours here?

Mr. Jenks: 58.

Mr. Gladstein: I will make a correction if it has to be.

The Court: Well, one week is 58 hours. Is that the highest?

Mr. Gladstein: Well, I was wrong about the 60 hours. Well, then, if I am wrong, as the record shows, I apologize and accept the correction. That's all. Thank you very much.

The Court: I don't know that it is essential that I should know, but it isn't quite clear to me as to what work this man performed.

Mr. Poole: Well, that is set forth very minutely in the stipulation.

The Court: Well, that's all that is necessary.

Mr. Poole: If your Honor Please, I'd just like to read you one paragraph here to show you the extent to which we have gone into this. Now, this paragraph appears on page 135 of the stipulation, under the heading "Explanatory Notes with Respect to Augustine Lorenzo," the witness who just left the stand. And the paragraph reads as follows:

> "The work performed by this employee during each work week during the period from November 20, 1946, to and including September 14, 1947, and the only work [144] per-

formed by him during each such work week was the following: He transmitted, as received from his supervisor, orders for the amount of irrigation water to be delivered to the Plantation from upper reservoirs for each work period. He was responsible for arranging diversion gates in the main plantation supply canal so as to distribute the water in proper proportion to the various delivery ditches on the Plantation. He checked water measurement status to insure delivery of the proper amount of water into the system. He was responsible for the proper maintenance of the irrigation canal system under his charge and for reporting immediately any major breaks or maintenance requirements to the proper plantation authorities. He patrolled the ditch lines under his custody to insure proper delivery of water throughout the work day. During the non-irrigation periods he cleaned irrigation ditches and tunnels of the irrigation distribution system."

And so forth. And then you get an explanation.

The Court: Well, that makes it clear enough. I couldn't see how he could put in a full day plus overtime just transmitting civil messages.

Mr. Gladstein: I should have called your Honor's attention to the details of that stipulation.

Mr. Poole: Incidentally, each one of these stipulations is in the same detail. [145]

Mr. Gladstein: Mr. Kibota.

HARU KIBOTA

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Gladstein:

Q. Mr. Kibota, your full name is Haru Kibota? And are you the Haru Kibota who is a party in this action? A. Yes.

Q. How long have you lived at Waialua?

A. You mean in Waialua?

Q. Yes. A. Or on the plantation?

Q. On the plantation. A. 27.

Q. 27 what, years? A. No.

Q. Since 1927? A. Yes.

Q. So that you have lived there for 23 years, since 1927? A. Yes.

Q. And have you worked for the company for that same time? A. Yes.

Q. And you live in Waialua? [146]

A. Yes.

Q. You live in one of the company houses?

A. Yes.

Q. How long have you lived in the house that you are in now?

A. Oh, just I move in three houses.

Q. You lived in three different houses?

A. Same camp.

Q. And all of the houses belong to the company, is that right? A. Yes.

Q. You live there with your family, do you?

A. Yes.

(Testimony of Haru Kibota.)

Q. What is your job with the company called?

A. Steam engine pump operator.

Q. Steam pump operator?

A. Steam pump operator.

Q. Is that right?

A. Steam pump operator.

Q. Did you have that job back in 1946 and 1947? You had the same job back in 1946 and '47?

A. No, since '41.

Q. You have had it since '41?

A. Before that, a fireman.

Q. Before 1941 you were a fireman? [147]

A. Yes.

Q. And since 1941 you have been a steam pump operator? A. Yes.

Q. Where do you do your work?

A. In the pump.

Q. Well, I know you do it on the pump, but on what part of the plantation? What building?

A. In the pump building.

Q. It is the pump building? A. Yes.

Q. Where is that located?

A. Four miles from the mill.

Q. Four miles from the mill?

A. About four miles.

Q. Do you work a regular shift, daytime or nighttime? A. Three shifts.

Q. There are three shifts? A. Yes.

Q. And do you work the same shift all the time?

A. No.

(Testimony of Haru Kibota.)

Q. You shift around with the others?

A. Yes.

Q. Do you supervise any other workers?

A. No.

Q. How about the firemen and the oiler? [148]

A. Oh, yes. My chief, I supervise.

Q. Your chief and you supervise? A. No.

Q. The chief supervises?

A. No, but only my shift.

Q. On your shift do you supervise any firemen or oilers? A. Yes.

Q. And among your duties do you watch the boiler and the equipment, and so on? A. Yes.

Q. And did you do repairs as they were necessary? A. Yes.

Q. That is during this time that we are talking about, 1946-'47? A. Yes.

Q. Now, last week we came out and we showed you, you remember, a list of pages, Mr. Kibota, beginning at 136 and ending with 145, showing the number of hours that you worked in different work weeks back in '46 and '47; do you remember going over this, looking through these pages, is that right?

A. Yes.

Q. And are you satisfied that the hours that you worked as shown here are correct? A. Yes.

Q. They are correct? [149] A. Yes.

Q. And that the rate of pay and the wages you received were correctly set forth here, is that right?

A. Yes.

(Testimony of Haru Kibota.)

Q. Did you ever keep any records of your own?

A. No.

Q. Did you ever, when you received your pay, did you ever complain to the company that there was a mistake of any kind? A. No.

Q. You did not? You were satisfied at the time you received the pay during 1946 and 1947, that it was correctly figured out? A. Yes.

Q. Now, there is in here one page in which they set forth, they tell the kind of work that you did during that time. Are you satisfied that that is correct, that that is a correct statement of the kind of work that you did? A. Yes.

Q. You are?

The Court: Well, briefly what was that? How big a pump plant was it

Q. The Judge wants to know how big the pump plant is.

The Court: How many million gallons?

The Witness: Nine million gallons for one pump. We have [150] two pumps.

Q. You have two pumps? And each pump is capable of pumping nine million gallons?

A. Yes.

Q. Per day? A. Yes.

The Court: Two pumps, one big steam engine?

The Witness: Yes, two steam engines.

The Court: Two steam engines for each pump?

The Witness: Nine million gallons each.

The Court: How many boilers?

The Witness: Four boilers.

(Testimony of Haru Kibota.)

The Court: What do you burn, oil?

The Witness: Yes, burn oil.

The Court: Well, now, these shifts, they all change at the same time? I mean when you come on a new fireman comes on? All change at the same time?

The Witness: Yes.

The Court: All right.

Q. Now, during that time the water, the water that was supplied, most of that was used for irrigation, is that right? A. Yes.

Q. But some of that was used for domestic use, for drinking water and bathing, and so on, in the village and in the homes, is that right? [151]

A. Yes.

Q. And in others? A. Yes.

Q. All the water in the plantation comes from the same line, same pumps? A. Yes.

Q. Did you repair your equipment there whenever it was necessary? Whenever it was necessary, did you repair the pumps or any of the machinery?

A. Yes.

Q. You did that? A. Yes.

Q. How often did you do that How often did you make repairs? Did you fix up anything that was wrong?

A. Oh, we had the chief engineer.

Q. You have a chief engineer?

A. Yes. When we get trouble we call him and he gave us orders and we fix.

(Testimony of Haru Kibota.)

Q. He'd give you an order and you'd do whatever he said had to be done? A. Yes.

Q. In other words, you'd have a chief engineer who would inspect the condition and he would say what had to be done and you would do it, do the repairs? A. Yes. [152]

Q. How often did you do that during this time of '46 and '47, that we are talking about? Every week or two weeks or how often?

A. In case of trouble.

Q. Well, how many times did it happen?

A. I don't know.

Q. Well, did you have minor, little repairs every week? A. No.

Q. Didn't have leaks or something like that?

A. Sometimes once in a week small trouble, but most time nothing. But off season we repair——

Q. Now, in the off season what did you repair?

A. Overhaul.

Q. What, the pump equipment?

A. The pumps, steam engine.

Q. Right in that pump house where you worked?

A. Yes.

Q. And in the off season did you work in the same place as when the grinding season was on, same place? A. Yes.

Q. Did you ever go to any of the supporting shops?

A. I am not—the chief engineer mostly give me only once—the chief engineer only once.

(Testimony of Haru Kibota.)

Q. You mean the chief engineer orders you to repair some place else at one time? [153]

A. Yes.

Q. But generally, all the time, where is your work? Where was your work, in the pump house or in some supporting——

A. In the pump house.

Q. And that is in the off season, too?

A. Yes.

The Court: Now, this was artesian water, artesian wells? You get your water out of wells?

The Witness: Yes.

The Court: Not out of a stream?

The Witness: No.

The Court: Now, you speak about off season. Both of these pumps didn't shut down for two, three months, did they, at any time?

The Witness: Oh, depending on the weather.

Mr. Poole: What was the answer?

The Witness: Depending on the water. If too much rain, they shut down.

The Court: Even during the planting season?

The Witness: Yes.

The Court: Well, now, what do you mean by off season, then? Whenever they shut down? If any repairs are to be made, you make them?

The Witness: Yes.

The Court: Now, there is a time here from December to [154] February every year when the mill shuts down, no more cane to grind. Well, now, you don't shut down during that time or do you?

(Testimony of Haru Kibota.)

The Witness: On some years no rain, and we run. And sometimes——

The Court: The Plantation needs water, drinking water. Where else do they get it if not from your pump?

The Witness: Oh, different. The master water is from the motor. We shut down the steam engine and we start motor. That is domestic water.

The Court: Where do you get the electricity for the motor? Where? Hawaiian Electric Company?

The Witness: I don't know.

The Court: Or from the mill? You don't know?

The Witness: Maybe. I don't know. I don't know from where the electricity. Just start the switch and start the motor.

The Court: Then you got small pump, too?

The Witness: Yes, motor pump.

The Court: You've got a small pump for extra?

The Witness: Yes.

The Court: When the big pump shuts down?

The Witness: When steam pump shut down, motor pump.

The Court: You run small pump?

The Witness: Yes. [155]

The Court: All right. Go ahead.

Q. (By Mr. Gladstein): When you shut down the pump, that has nothing to do with the mill, is that right? It doesn't make any difference whether the mill is grinding or not, is that right?

A. Yes.

Q. In other words, your work has no connection

(Testimony of Haru Kibota.)

with the grinding in the mill, am I right?

A. Yes.

Q. In other words, your shifts, whether you shut down that pump, depend on rain, is that right?

A. Yes.

Q. Is that correct? A. Yes.

Q. Now, when the pump is shut down, what happens to the rest of your crew? Where do they go? Where do they work at?

A. Sometimes we wash the boiler.

Q. Wash the boiler? A. Yes.

Q. Do they ever get sent to the machine shop?

A. And clean the engine. And sometimes I don't know—the engineer took the boys together to the mill, or I don't know.

Q. Machine shop?

A. Or maybe machine shop. [156]

Q. That is the fireman and oiler?

A. The oil man.

Q. But you stay at your pump in order to make the repairs there? A. Yes.

Q. When you make these repairs, are you doing the work of a machinist? You are doing machine work? A. No.

Q. What kind of work are you doing?

A. Just anything broken down.

Q. Do you thread pipe?

A. Give to the engineer, take him to the machine shop. They fix them and bring them back and we put them back.

Q. Do you thread pipe?

(Testimony of Haru Kibota.)

A. Yes, thread pipe.

Q. Do you thread pipe?

A. Yes, we thread pipe.

The Court: You got small tools in there?

The Witness: Yes.

The Court: Now, you got big lathe there or small lathe?

The Witness: No, no lathe.

Q. When you need a lathe, why, you send the piece to the machine shop, do you? A. Yes.

Q. Is that right? [157]

A. Send to the chief engineer and the engineer took to the machine shop.

Mr. Gladstein: That's all the questions I have. Does your Honor have any questions?

The Court: No.

Mr. Gladstein: Do you have any cross-examination?

Mr. Poole: Yes, I do.

Cross-Examination

By Mr. Poole:

Q. Mr. Kibota, you made a statement I think may have misled this Court and possibly others who heard you with respect to the source of domestic water out at Waialua. I think that what you said implied that all the domestic water in Waialua came from the pump that you operated. Now, that isn't true, is it? A. Yes.

Q. You say that it is?

A. I can't understand.

(Testimony of Haru Kibota.)

Q. Well, now, there are many different pumps and wells from which water is produced out at Waialua which is used in the villages as drinking water. It doesn't all come from your pump?

A. In my pump.

Q. It all comes from your pump?

A. Yes, same line going up.

Mr. Gladstein: He means the pump is on the same line. [158]

The Witness: We shut down the steam pump and we start the motor pump, going up the same line.

The Court: Well, the line up from your pumping plant, does that join into another bigger line?

The Witness: Just join.

The Court: Joins in?

The Witness: The same section but the steam engine and the motor pump same section but the discharge line is connected to it. If we shut down the steam pump, we open the motor side, then going to the same line.

Q. (By Mr. Poole): My question is this: Aren't there many dwelling houses at Waialua that get their water from other wells or other pumps than the one that you operate? A. No.

Q. (By Mr. Gladstein): Are there any other pumps, he wants to know?

A. No, just pump.

Q. From your pump?

A. Pump 3 water, only just pump 3, pump No. 3.

(Testimony of Haru Kibota.)

Q. Do you know where pumps No. 1 and 2 are?

A. Yes.

Q. Where are they?

A. Down in Waialua, they have 14 pumps.

Q. And they have other pump operators on other pumps? [159]

A. The engineer going to check up just around.

Q. Do they have men that do the same kind of work as you do on these other pumps?

A. No, motor pump.

Mr. Gladstein: I see those are water pumps.

Q. (By Mr. Poole): Are you familiar with the pump known as pump 5? A. Pump 5?

Q. Yes. Do you know that it is a fact that water from pump 5 is also used for plantation village purposes? A. I don't know.

Q. Did you ever hear of pump 2-B?

A. No.

Q. The pump which supplies apparently water to the plantation village only. But you thought that all the water that was going to the various people who lived on the plantation, for drinking purposes, came from your pump?

A. No. Some are another pump.

Q. Well, now, I didn't understand you. I thought you said it did. You say that it does come from some of the other pumps?

A. On our section is Kawailua, Halemanu, and——

Q. You mean your section?

(Testimony of Haru Kibota.)

A. Yes, my side. They are drinking water from the pump on that line. [160]

Q. I think we are in agreement now. Mr. Kibota, the period of the lawsuit here that we are interested in finding facts on runs from November 20, 1946, to September 14, 1947. I want to ask you a question as to whether during that period of time you have any recollection of going into a machine shop and doing work outside of the pump house. Isn't that a fact that you never left there? All your work was in the pump house during that period?

A. No, I don't think so. I don't remember.

Q. You don't remembe . Well, the stipulation so shows.

Mr. Gladstein: All right, just a minute.

Q. (By Mr. Poole): The pump, as I understand it, that you operate was operated only during or when the weather required additional irrigation because of the lack of rainfall, and when you were not operating the pump, why, you were normally engaged in making repairs to the pump, is that correct? A. Yes.

Q. And that repair work was done in the pump house? A. Yes.

Q. Now, is the pump house located on the plantation? Is it located right on the plantation?

A. No, the pump is 35 feet, I remember, 35 feet down.

Q. Is the pump house located on the plantation? By the plantation I mean the place and area which

(Testimony of Haru Kibota.)

the company [161] owns on which they produce cane.

The Court: In the cane field. Is the pump in the cane field, cane all around?

The Witness: No, a valley.

Q. It is in a valley?

A. The pump is in a valley.

The Court: The pump is in a valley?

Mr. Poole: The stipulation shows that the pump house is on the plantation.

Mr. Gladstein: Owned by the company, if that is what you mean.

The Court: The pump is on the plantation property?

Mr. Poole: It is located in a valley.

The Court: On the plantation?

Mr. Poole: On the plantation. Is that correct?

Mr. Gladstein: But not in the cane fields.

The Court: Now, he said something about 35 feet down.

The Witness: The engine room, boiler room, bed level and 35 feet, engine room, engine is about 35 feet below.

The Court: Below the surface?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Poole): Now, you stated that the pump house was located four miles from the [162] mill? A. Yes.

Q. Don't you think you could have been wrong?

(Testimony of Haru Kibota.)

Might it not have been two miles, which is what the stipulation states? You don't know?

A. I don't think so.

Mr. Gladstein: Several miles, between two and four? Mr. Jenks said he drove it in a car and it was about two miles.

Mr. Jenks: Just about.

Mr. Poole: Do you agree that it was two miles?

Mr. Gladstein: I don't think that whether it is two or four miles makes any difference.

The Court: It makes a difference in mileage when you are driving a car or walking.

Mr. Gladstein: That's one thing that isn't going to make any difference in this case one way or another. The witness said that in his judgment it is about four miles.

Mr. Poole: Well, you are willing to agree that it is two miles as stated in the stipulation?

The Court: Well, it is just the distance from the mill?

Mr. Gladstein: With the understanding that it doesn't impugn the testimony of the witness who is giving a statement of the distance.

Mr. Poole: I want it understood that we are either going to stand by the stipulation or we are not. I will say to you now before the Court that you will either go along with what [163] we stated in this stipulation or we are going to withdraw it.

Mr. Gladstein: Just a moment. I am not going to agree to impugn the testimony of the witness who gave a judgment as to distance.

(Testimony of Haru Kibota.)

Mr. Poole: Well, I can say to Counsel on the other side that we are either going to stay with the stipulation or we are going to go through and try the whole thing. I am not going to permit an agreement of facts which were worked out carefully with the other side to be discredited, as he is attempting to do here. It is highly improper.

The Court: Well, what is discredited?. Is it because the witness answered it is four miles from the mill, or is it some other thing?

Mr. Poole: That's the point. He answered questions in such a manner, phrasing them to misstate the facts of the stipulation. Now, whether it is because he is not being careful and conscientious enough in the framing of these questions, or whether he is attempting to discredit the stipulation, I don't know. But we are either going along and stand on the stipulation or we are going to withdraw it.

Mr. Gladstein: I entered a stipulation. The stipulation is in the record and I don't see what provokes these remarks by Mr. Poole. I think he is in a bad temper at this ti[illegible] of day, which is unusual for him. He has lost his sense of humor and proportion and his usual standards. And I think he [164] will probably want to withdraw some of the remarks that he has made once he has examined them.

The Court: Well, let's step along.

Mr. Gladstein: Are you through with the witness?

(Testimony of Haru Kibota.)

Mr. Poole: I am through.

Mr. Gladstein: Do you want to take a 5-minute recess?

The Court: Well, five minutes?

Mr. Gladstein: Well, I think this man will take more than five minutes, so we might as well go over until tomorrow.

The Court: Well, if you are going to exhaust another witness——

Mr. Poole: Well, I suggest we have one more witness.

Mr. Gladstein: All right. How about Maneja?

CIRACO MANEJA

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Gladstein:

Q. Your name is Ciraco Maneja? A. Yes.

Q. And you are the party whose name is in this case? A. Yes.

Q. And you are the Maneja who is a party in this suit for overtime? A. Yes.

Q. Where do you live? [165]

A. I live in Waialua.

Q. In one of the plantation homes?

A. Yes.

Q. In one of the camps? A. Yes.

Q. How long have you lived there?

A. About 22, 23 years.

(Testimony of Ciraco Maneja.)

Q. About 23 years, is that right? A. Yes.

Q. Have you worked for the company about 23 years? A. Yes.

Q. What is your work at the present time?

A. Tractor driver.

Q. Is that the same as tractor operator?

A. Tractor operator.

Q. The company calls it operator and you call it driver, is that right? In 1946 and 1947, was that your job, tractor operator? A. Yes, sir.

Q. Or tractor driver, is that right?

A. Yes.

Q. What kind of a tractor was that?

A. During 1946, is cultivating tractor.

Q. And what horsepower?

A. Thirty horsepower. [166]

Q. You drive a different type of tractor now?

A. Yes.

Q. What kind do you drive now?

A. I driving tractor 95 horsepower.

Q. You are driving a 95 horsepower tractor at the present time? A. Yes.

Q. But back in 1946——

The Court: Is that a caterpillar?

Q. Is that a caterpillar? A. Caterpillar.

The Court: Run on tractors, caterpillar?

The Witness: Caterpillar.

The Court: Diesel?

The Witness: Diesel.

Q. Diesel engine? A. Yes.

(Testimony of Ciraco Maneja.)

The Court: What number is it, No. 6, No. 4, No. 6, 7?

The Witness: Six.

Q. Supposed to be what?

A. Supposed to be grade 6.

Q. But back in 1946 and 1947, you were driving a 30 horsepower cultivator, cultivating machine, is that right? A. Yes.

Q. Was that diesel or gasoline? [167]

A. Diesel.

Q. And where did you do your work when you were driving your machine, in the cane fields?

A. In the cane fields.

Q. All the time? A. Sometime.

Q. Sometime? Now, were there times when you worked, did any repair work? A. Yes.

Q. During that period? Where did you do repair work? A. Helping mechanic.

Q. Helping mechanic? Where?

A. Down in the tractor shop.

Q. In the tractor shop? A. Yes.

Q. And, in other words, you worked as a mechanic's helper, is that right? A. Yes.

Q. What did you repair?

A. We repair any parts of engine that the mechanic told.

Q. You mean of the cultivator or tractor, is that it? A. Yes.

Q. Well, did you ever repair cane cars and things like that? [168]

A. Sometimes we repair cane cars.

(Testimony of Ciraco Maneja.)

Q. Where did you do that repair work on the cane cars?

A. Right in front of the round house.

Q. In front of the round house? Tell me this: Did you ever take men to and from work?

A. Yes.

Q. Other tractor men? A. Yes, sir.

Q. You did that? You did that every day, every week or did it change? A. No, sir.

Q. How did that operate? Tell me about that.

A. Once every three weeks.

Q. Once every three weeks? A. Yes.

Q. You mean for a whole week you did it?

A. Yes.

Q. Every day for a week you would do it and then the next two weeks you didn't do it, somebody else did it, is that right? A. Yes.

Mr. Poole: Do what?

Mr. Gladstein: Pick up men at their houses and take them to the fields. Is that it?

The Court: With what machine? [169]

Q. What kind of machine did you drive?

A. Pick-up.

Q. Pick-up truck? A. Pick-up truck.

Q. Yours or the company's?

A. The company's.

Q. And did you get paid for picking up the men at home and taking them into the fields?

A. Yes.

Q. Did you? A. Yes.

Q. How much pay, half hour, one hour?

(Testimony of Ciraco Maneja.)

A. I think it was one hour.

Q. One hour a day? A. One hour a day.

Q. So you brought the men from their homes in the plantation village to the cane fields where they worked, and then after the day was over, after the shift was over, you took them back home, is that right? A. Yes, sir.

Q. And you got one hour's pay for that work?

A. Yes.

Q. And you did that every day or all your working time for one week, and then the next two weeks somebody else did it, is that right? [170]

A. Yes.

Q. And then you would do it again?

A. Yes.

Q. Is that the way it worked in 1946 and 1947?

A. Yes.

Q. Now, did you do most of your repair shop—withdraw that. Did you ever do any of your repair work in the field? Suppose there was a breakdown on this machine of yours, did you ever do any repairs on it?

A. Sometimes we did the repair work out in the field; if the tractor really broke down,——

Q. If the tractor was not really broken down?

A. Yes.

Q. But if the damage, or if whatever was wrong with the machine you could not fix right in the field, why, it was taken into the shop, is that right?

A. Yes.

(Testimony of Ciraco Maneja.)

Q. And did you do that yourself, take the machine into the shop? A. Yes.

Q. And did you help repair the machine in the machine shop? A. Yes.

The Court: How did you get it there? How did you get the machine into the machine shop? [171]

The Witness: I mean to the tractor shop.

Q. How did you get it there?

A. We load it on a trailer in the field.

Q. You'd call for somebody else to get you a truck-trailer? A. The truck drivers.

Q. The truck drivers would come and bring a truck-trailer, is that it? A. Yes.

Q. And how would you get that machine of your on to that trailer? How did you do that?

A. The machine is still going yet, so we——

Q. You'd drive it right up to, on the trailer?

A. We drive on the trailer.

Q. And if you couldn't drive it, what did you do?

A. We take out another truck to pull the truck.

Q. You'd tow it? A. Yes.

The Court: Block and tackle?

Q. Did you ever have to hoist it up?

A. Yes.

Q. On to the trailer? A. Yes.

Q. Now, Mr. Maneja, you remember last week I came down and spoke to you and I spoke to you about these descriptions [172] here beginning at page 87 and ending at page 102, and we went over

(Testimony of Ciraco Maneja.)

this together? This shows the number of hours you worked each week during that time. Did you keep records, your own records? Did you keep any records of your own as to how many hours you worked every week in that time? You didn't, did you? A. No.

Q. And you don't remember yourself exactly how many hours you worked in every week, do you?

A. No.

Q. You don't remember that, do you?

A. No.

The Court: That is at page what?

Mr. Gladstein: Page 87 to 102.

Q. Now, looking through these and going over these week by week, am I right that you believe that this is a correct statement of the number of hours that you worked in those weeks as shown here, is that right? A. Yes.

Q. And you are satisfied that according to your best remembrance this is about right, is that right?

A. Yes.

Q. And that the rate of pay was 96 cents an hour in the early part; that was correct, wasn't it?

A. Yes.

Q. And the amount of time, the amount of money that you [173] received, also was shown correctly here, is that right? A. Yes.

Q. And there is a statement you remember that we read here about the kind of work that you did and various notes, and those were correct, were they not? A. Yes.

(Testimony of Ciraco Maneja.)

Q. All right. Now, there were times when you worked 48 hours a week and you got no overtime at all, isn't that right? A. That's right.

Q. That's correct? There were also times when you worked more than 48 hours a week, isn't that right? A. That's right.

Q. For example, here is a week where you worked 63 hours. Now, when you worked more than 40 hours, more than 48 hours, you got overtime for the hours after 48? A. Yes.

Q. Is that right? A. Yes.

Q. But for the first 48 hours you got just straight time, is that right? A. Yes.

Q. Now, the work that you did, as you describe it here and as it shows in this stipulation, these pages referred to, that went on the same way? Did that go on the same way whether [174] the grinding season was on or whether the off season was on, or did it change? Did you do different kinds of work in the off season? A. We do.

The Court: Ask him when the mill was shut down.

Q. Well, when the mill was shut down what kind of work do you do? A. Any kind.

Q. In other words, you were not out in the field at that time? A. Out in the field.

Q. Were you still? A. Yes.

Mr. Poole: The plowing, the cultivating and that type of field activity continued even though the mill was closed down.

The Court: Twelve months a year?

(Testimony of Ciraco Maneja.)

Mr. Poole: Surely.

The Court: I don't see where that would have any connection with it. The harvesting would but not the cultivation.

Mr. Gladstein: That's right. Well, that is in effect all that I wanted to bring out, what the fact was, whether or not for the 12-month period he did the same duties, and apparently he did. Is that right, Mr. Poole?

Mr. Poole: Yes. [175]

Mr. Gladstein: I have no further questions.

Mr. Poole: I have a question. I want to consult just a moment with Counsel for the Defense.

(Counsel confer.)

Cross-Examination

By Mr. Poole:

Q. Mr. Maneja, this lawsuit in which you are a witness is for a period of time running from November 20, 1946, up to September 14, 1947. Now, that is the only period of time about which we are interested in getting facts here. Now, what I want to ask you is this: do you recall that during that particular period of time, which as you see is about four years ago, that you engaged in any repairs of cane cars? A. Yes.

Q. You think you repaired cane cars four years ago? A. Yes.

Q. During that particular time? A. Yes.

Q. Well, the records don't show that you did.

(Testimony of Ciraco Maneja.)

Now, could you indicate what time of the year in 1946 or 1947 that you were engaged in repairing cane cars? I think the records of the plantation show that in other years you may have repaired cane cars, but your work changed around a little.

A. Yes.

Q. And the stipulation, the facts as set forth in your [176] job, which I understand from the opposing Counsel he showed to you, don't show that you engaged in the repair of any cane cars; you did many other things. But you didn't repair any cane cars in this period of time, that is, from the fall of 1946 up to September 14, 1947. Do you think that stipulation is wrong or do you think it is correct? A. I don't remember.

Q. Well, you don't know for sure whether you repaired any cane cars during that period of time?

A. No, I don't know for sure. [177]

* * *

August 31, 1950

The Clerk: Civil No. 787, Waialua Company, Limited, vs. Ciraco Maneja, for further trial.

Mr. Gladstein: Ready for the defendant and cross-complainant.

I will call to the stand, your Honor, Mr. Masaiki Oato.

MASAIKI OATO

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Mr. Gladstein: For the record, your Honor, the Court will find a description of the duties and activities of this employee during the period involved in the case in the stipulation commencing at page 360 and ending with 379, inclusive, and those pages also include a week by week breakdown of the hours of work worked by this employee during the period covered by this case.

Direct Examination

By Mr. Gladstein:

Q. Mr. Oato——

The Court: What is the name?

Mr. Gladstein: Oato (spelling) O-a-t-o, and the first name is Masaiki (spelling) M-a-s-a-i-k-i.

Q. (By Mr. Gladstein): Now, you are the same Masaiki Oato who is one of the defendants and one of the [183] cross-claimants in this case; isn't that right? A. Yes.

Q. Where do you live? A. Waialua.

Q. In the village itself? A. That is true.

Q. And do you live in one of the Company owned homes? A. Yes.

Q. How long have you lived there?

A. Thirty years.

Q. Thirty years? A. Yes.

Q. How long have you worked for the Company? A. Fourteen years.

(Testimony of Masaiki Oato.)

Q. Fourteen? A. Yes.

Q. In other words, the first sixteen, I take it, you were living there because you were a member of a family. A. That is true.

Q. And your father, or other members of the family, was working for the Company; is that right? A. Yes.

Q. Is that right? A. Yes.

Q. Now, what is the job called that you do with the [184] Company at the present time?

A. At the present time I am utility electrician.

Mr. Jenks: I wonder if the witness can talk a little louder.

The Court: What?

Mr. Gladstein: Utility electrician. Will you try to speak up so all these lawyers can hear you, because they are entitled to hear you. They came here for that purpose.

Q. (By Mr. Gladstein): Prior to the time that you were utility electrician, did you have a different job?

A. Such as the time I am utility electrician well we do all sorts of work connected to electrical works.

Q. Did you have a particular job? For instance, did you ever work at the evaporator station?

A. Yes.

Q. Were you an evaporator station employee for a while? A. Yes, I was.

Q. Now, during the time that this case covers, which is from a date in November, 1946, to a date

(Testimony of Masaiki Oato.)

in September, 1947, is it correct that for the first part, for a part of that period, you were an evaporator station employee, and later on, within that same period of time, your work changed to that of utility electrician? A. Yes. [185]

Q. Is that correct? A. Yes.

Q. Oato, I am going to show you pages 360 to 379, inclusive, of this stipulation.

Mr. Gladstein: Has it been designated, Mr. Clerk?

The Clerk: No, it was just filed with the pleadings.

Mr. Gladstein: Yes.

Q. (By Mr. Gladstein): This stipulation which has been filed in this case, do you recognize these pages as the same as pages that I showed you last week in going over and preparing with you your testimony in this case? A. Yes.

Q. All right. Now, at the back portion of these pages commencing on page 375, under the title "Explanatory Notes," there is a description there of the duties and work that you performed during the period of time covered by this case. Do you recall my reading and going over this with you?

A. Yes.

Q. And you understood it fully, did you not?

A. Yes.

Q. Now, tell me this, is that statement on those pages a true and correct statement of the activities and work and tasks that you performed during the time covered in this proceeding?

(Testimony of Masaiki Oato.)

A. Yes. [186]

Q. It is? Is that right? A. Yes.

Q. Now, on the pages that precede, that come before, page 375, there is a week by week breakdown, commencing with the work week of November 18, 1946, which shows day by day the number of hours that you worked. You see that, do you not? A. Yes.

Q. Did you yourself keep any personal records of the number of hours that you worked during the period covered in this case? A. No.

Q. Do you have an exact recollection yourself at this time of the number of hours that you worked in each week? A. I do not.

Q. Or on each day? You don't, do you?

A. No.

Q. Do you have a general idea of the hours that you worked during that period?

A. Well, more or less.

Q. Yes. And in going over these work weeks with me, is it correct that these figures and the information shown on these pages from page 360 to page 374, inclusive, in general agree with your best recollection of the number of hours that you worked in each of the work weeks shown there?

A. Yes. [187]

Q. Is that right, sir? A. Yes.

Q. And what about the rate of pay? Is that shown correctly? A. Yes, it is about.

Q. And is the amount of wages that was paid

(Testimony of Masaiki Oato.)

to you during each of those work weeks shown correctly? A. I guess so.

Q. Did you ever have occasion, when you received your pay check, at any month during that period, to report any error or inaccuracy to the Company? A. No.

Q. You were satisfied—Did you examine each of those pay checks, when you got them?

A. Yes.

Q. You did. How often did you get them?

A. Every month.

Q. Every month. And were you satisfied that the amounts that were given to you were correctly figured out? A. I guess so.

Q. Now, there were times during that period when you worked 57 hours in a week, 48 hours in a week, and other numbers of hours per week that were greater than 40; isn't that right?

A. That's right. [188]

Q. When you worked 48 hours a week, or any number of hours between 40 and 48, did you receive overtime?

A. No, except on off seasons.

Q. And when you refer to the off season, you mean the period when the mill was shut down and the grinding of cane was stopped; is that right?

A. That is true.

Q. During the off season you performed the work that is shown here in this stipulation; isn't that right? A. Yes.

(Testimony of Masaiki Oato.)

Q. And that is the only time that you received overtime?

A. Well, within the 40 to 48 days, that is the only time.

Q. That is to say, when you worked 8 hours a day? A. Yes.

Q. When you worked over eight hours a day, you received overtime for the hours over eight?

A. Yes.

Q. When they called you in on the day you were supposed to be resting, the one day of the week, you received time and a half then, didn't you? A. That is true.

Q. Now, the overtime rate was time and one-half of the straight time; isn't that right?

A. Yes. [189]

Q. Your work as a utility electrician that is in the electric shop, isn't it? A. Yes.

Q. But does that work take you outside of the electric shop? A. Yes, it does.

Q. Where?

A. To outside villages on repairs.

Q. And what do you repair?

A. Well, all sort of electrical, especially on houses.

Q. And what types of equipment? Poles? Electric poles? Lines?

A. Well, that is part of it.

Q. That is part of the job of a utility electrician?

(Testimony of Masaiki Oato.)

A. That is true, and also repairing of—rewiring of houses.

Q. During the time that you were an evaporator station helper, did that work include the checking of tubes and replacing of worn-out ones?

A. Yes.

Q. Was that during the season or off season?

A. Well, part of it was during the season, on Sundays, and the main check-up was off season, major repairs.

Q. In other words, major repairs were off season, but on Sunday and the days the mill was shut down, you did minor [190] repairs?

A. That's right.

Q. Is that right, sir? A. Yes.

Q. Did your work include repairing of valves and general repairs of various kinds?

A. Yes.

Q. Now, as a utility electrician did you work a particular shift during the time that we are concerned with here? A. No.

Q. Did you move around from one shift to another? A. No, one shift.

Q. That is what I asked you. You worked on one particular shift; is that right?

A. That's right.

Q. What shift?

A. That is day shift, from 6:30 until 3.

Q. From 6:30 in the morning until 3 in the afternoon? A. Yes.

Q. Is that right? A. Yes.

(Testimony of Masaiki Oato.)

Q. Now, when you were working as an evaporator station helper, how many shifts were there for that work? A. Three shifts. [191]

Q. Three, and did you have a particular shift, or did you move around?

A. Move around from shift to shift.

Q. That is, the men were rotated from time to time; is that right? A. Yes.

Q. Thus everybody would get a chance to work day shift and also have to take on the night shift, and so on; is that it? A. Yes.

Q. In the off season how many shifts were there that you worked——

Mr. Gladstein: Withdraw that.

Q. (By Mr. Gladstein): When you were working as an evaporation station helper, when the off season was in existence did you still have three shifts? A. No.

Q. How many shifts? A. One shift.

Q. One shift. Was that a day shift?

A. Yes, only one.

Q. And everybody doing that work worked a day shift? A. Yes.

Q. Is that right? A. That's right [192]

Q. Is it true that during the period we are concerned with in this case there were weeks when you worked more than 40 hours a week and did not get overtime; is that right? A. Right.

Q. And those are shown in this stipulation that I showed you? A. Yes.

(Testimony of Masaiki Oato.)

Q. Where would the Court go to find out how much, if anything, you had coming to you? Would it go to this stipulation? A. Beg pardon?

Q. In other words, the Court could find out from this stipulation how much you had coming to you, if you had anything coming to you in the way of overtime? A. Yes.

Q. Is that right? A. Yes.

Mr. Poole: No questions.

Mr. Gladstein: Thank you very much.

(Witness excused.)

Mr. Gladstein: I will call Mr. Mori.

EDWIN MORI

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows: [193]

Direct Examination

By Mr. Gladstein:

Q. Your name is Edwin Mori? A. Yes.

Mr. Gladstein: (Spelling) M-o-r-i, your Honor. Edwin (spelling) E-d-w-i-n.

Q. (By Mr. Gladstein): You are the Edwin Mori who was sued here as a defendant by the Waialua Company and who in turn has filed a cross-complaint, which you authorized me to file; isn't that right? A. Yes, sir.

Q. Where do you live, Mr. Mori?

A. Waialua.

(Testimony of Edwin Mori.)

Q. In the village itself? A. Yes, sir.

Q. How long have you lived there?

A. Thirty-four years.

Q. How many? A. Thirty-four years.

Q. Thirty-four years. How long have you worked for the Company?

A. Sixteen years.

Q. Have you always lived, in those 34 years, in one of the Company's homes? A. Yes.

Q. One of the Company's houses; is that [194] right? A. Yes.

Q. I take it that before you went to work for the Company, someone in your family, with whom you were living, was working for the Company; is that right? A. Yes, sir.

Q. Was it your father? A. Yes, sir.

Q. Now, sixteen years ago you say you went to worked for the Company? A. Yes, sir.

Q. What job do you do for them now?

A. Oh, I am a housing carpenter.

Q. A housing carpenter. Do you work in the carpenter shop?

A. Well, we usually go outside to repair the Company houses.

Q. But your central headquarters are the carpenter shop, or the place out of which you work would be the carpenter shop, wouldn't it?

A. Yes, that is where we do mill work.

Q. That is where you do the mill work?

A. Yes.

Q. In other words, the carpenter shop is

(Testimony of Edwin Mori.)

equipped for the performance of mill work, and all of the other main jobs that carpentry requires; is that right? [195]

A. No, that is where we have our tools.

Q. Yes.

A. Like power saw, so that we go down there and we rip those lumbers that is needed for the particular house.

Q. Yes. Now, in 1946 and 1947 you were an employee of the carpenter shop, or a carpenter; is that right? A. Yes, sir.

Q. Mr. Mori, I am going to show you a part of this stipulation that begins at page 594 and ends at page 606. Have you seen this before, or the same kind of pages before?

A. Yes, I have seen.

Q. Last week; isn't that right?

A. Yes, last week.

Q. And we went over these carefully to see if they were correct; isn't that right?

A. Yes, sir.

Q. Now, on the last two pages there is a description of the work, the nature of the work, and the duties you performed and the activities you were engaged in in 1946 and 1947; is that correct?

A. Yes, sir.

Q. Now, is that a correct statement of the work that you were doing for the Company in that period?

A. Well, one paragraph we came across that

(Testimony of Edwin Mor[illegible].)

they said I was cutting steel pipe, but I didn't cut any steel pipe. [196]

Mr. Poole: During that period?

Q. (By Mr. Gladstein): You mean during that period?

A. Well, when we went through and he read about to me.

Q. Yes.

A. So she came to a paragraph saying——

Q. One paragraph?

A. Saying that I work on the steel pipe.

Q. And you didn't do that?

A. No, they were pipes made of paper and coated with tar, used for irrigation, so I work on it, but I didn't work on any steel pipes.

Q. What was it you worked on?

A. That was irrigation pipe about 6 inches by 36 inches long.

Q. And what was the work you did in connection with that? A. We cut in short lengths.

Mr. Gladstein: That is what that means. That is what that had reference to.

Mr. Poole: What were the pipes made of?

The Witness: Made of paper, compressed paper, coated with tar, used for irrigation.

Q. (By Mr. Gladstein): Do you remember where, in this stipulation, that paragraph is?

A. I don't know. She read to me. [197]

Mr. Gladstein: Let's take a look at it.

The Court: Ask the manager: What do they

(Testimony of Edwin Mori.)

call those pipes? What do you call that kind of pipe?

Mr. O'Donnell: It was a composition pipe to take the place of a concrete pipe in the irrigation.

The Court: It is known by a trade name, though.

Mr. O'Donnell: I can't recall the trade name, but I will get it for you.

The Court: I couldn't either.

Mr. O'Donnell: You would like it?

The Court: I know the kind of pipe, but I was just wondering.

Mr. Poole: It is not a steel pipe.

Mr. O'Donnell: It is not a steel pipe.

The Court: Well, there apparently is a little confusion.

Mr. Gladstein: It is at the top of 595.

Q. (By Mr. Gladstein): It is at the top of 595, isn't that right, Mr. Mori, and deals with the work week of December 9 to 15, 1946, and at the tail end of that work week description it says you spent seven hours of your work that week in cutting steel pipes for use in irrigation in the cane fields. That is what you had in mind?

A. Yes.

Q. Outside of that one statement the rest of the [198] statements are correct; is that right?

A. Yes.

Q. With respect to that statement you say you did do some work in connection with some kind of pipes, but they weren't steel pipes; is that right?

A. That's right.

(Testimony of Edwin Mori.)

Q. I see.

Mr. Gladstein: It is just the use of the word "steel" that is deceptive here and actually the witness did perform work, as shown here, except the word "steel" should be eliminated.

The Court: This was a pipe you could saw with a saw?

The Witness: Yes, ordinary saw.

Q. (By Mr. Gladstein): Now, with regard to the number of hours that you worked every day and every week that is covered here in these pages, 594 to 606, inclusive, do you yourself remember exactly how many hours you worked on any particular day or in any particular week?

A. We worked straight 48 hours a week.

Q. You did 48 hours every week? Well, there were some weeks when you worked less, isn't that right; you only worked 40 hours?

A. That is when I work at the office.

Q. In the office? [199] A. Yes.

Q. When you worked in the carpenter shop, your regular, usual work week was 48 hours; is that right? A. Yes.

Q. And that is shown here, in this stipulation, isn't it? A. Yes.

Q. That, generally speaking, you worked 48 hours? A. Yes.

Q. Did you keep any personal records of how many hours a week you worked during that period?

A. No, I usually keep by the month.

(Testimony of Edwin Mori.)

Q. By the month? A. Yes.

Q. And at the end of the month when you received your pay check, what did you do? Did you make a check of the pay check against your record?

A. Yes, sir.

Q. And did you find during that period that the amount you were paid was right or wrong?

A. It is correct.

Q. It was correct as far as figuring out the amount you were entitled to receive, based on the number of hours you worked and the rate of pay; is that right? A. Yes, sir. [200]

Q. Except for the question of overtime; isn't that right? A. Yes.

Q. You worked many weeks here 48 hours. Did you receive any overtime during those weeks?

A. No, we actually worked 48 hours.

Q. And you got straight time during those 48 hours? A. Yes, sir.

Q. And what you are seeking here is time and a half overtime for the hours between 40 and 48 in the weeks when you worked more than 40 hours; correct? A. Yes, sir.

Q. Are you satisfied, Mr. Mori, that the facts shown in this stipulation concerning you, relating to you as to the number of hours per week and per day that you worked during that period, the rate of pay and the wages you received, are true and correct? A. Yes, sir.

Q. During that time where was most of your

(Testimony of Edwin Mori.)

work done? Inside the carpenter shop or outside?

A. Outside.

Q. And, generally, what was it? Repair, maintenance, work of that kind?

A. Yes, general repair to a house.

Q. Building additions to houses? [201]

A. Yes, sir.

The Court: When you say "house," you mean dwelling house?

The Witness: Yes, sir.

Q. (By Mr. Gladstein): Were these houses owned by the plantation? A. Yes, sir.

Q. Now, were those houses in which employees of Company lived, or were they sometimes houses in which people lived that did not work for the Company? A. Yes, sir.

Q. Which was it?

A. Still owned by the Company, but the one that lives in is working outside.

Q. There were some cases of that kind?

A. Yes.

Q. In other words, you did that kind of work: is that right? A. Yes.

Q. And sometimes you worked on houses where the person who lived in the house did work for the Company; is that right? A. Yes, sir.

Q. Do you know which—well, you don't have any record of which ones you worked on, do [202] you?

A. Well, practically all the camp houses.

(Testimony of Edwin Mori.)

Q. All the camp houses? A. Yes.

Q. Well, the camp houses are the houses in which the employees of this Company lived; isn't that right? A. Yes, sir.

Q. Now, in your work did you do anything besides carpenter work, that is, straight carpenter work as that term is generally known, use of tools?

A. Off and on I go in the office and draw plans for the Waialua Agricultural Company about putting in additions.

Q. You drew plans? A. Yes, sir.

Q. What else?

A. Estimate the cost of the building.

Q. Beg pardon?

A. Estimate the cost of the buildings.

Q. You made estimates of building costs?

A. Yes.

Q. What else? A. That is all.

Q. Did you ever obtain permits or have anything to do with obtaining permits for building inspectors?

A. Yes, I made blueprints to obtain building permits.

Q. Did you ever do any work in connection with any of [203] the bath houses or wash houses?

A. Yes, we modernized and added bath houses attached to the houses.

Q. Did that include the making of forms for cement, and so on? A. Yes.

Q. Did you ever have occasion to work in or near or about the mill during this period we are talking about?

(Testimony of Edwin Mori.)

A. You mean in the mill yard?

Q. In the mill itself.

A. Well, sometimes we go in the factory during the off season and do some form work in the factory.

Q. Floor work? A. Yes, sir.

Q. In the mill? A. In the factory.

Q. When the mill is shut down? A. Yes.

Q. When the off season is on, or in effect; is that right? A. Yes.

Mr. Gladstein: I don't have any further questions. Does your Honor have any questions?

The Court: Did you do any work on shops or office buildings or repairs to bodies of cane [204] cars?

The Witness: Yes, early part of 1946 we repaired a few weeks on cane cars and off and on we go in the shop to make mill work, you see. That is in the shop.

Q. (By Mr. Gladstein): Those things, when you have done that, were shown, if you did that during the period covered in this case, were shown in the stipulation that we went over; is that right?

A. Yes, sir.

Mr. Gladstein: That is all I have, Mr. Mori.

Mr. Poole: No questions.

(Witness excused.)

Mr. Gladstein: Mr. Pacheco.

LOUIS PACHECO

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Just sit down, please.

Mr. Gladstein: Your Honor will find the facts as stipulated concerning this witness and defendant-cross-claimant Louis Pacheco in the stipulation commencing at 650 and ending at 660, inclusive.

Direct Examination

By Mr. Gladstein:

Q. Mr. Pacheco——

The Court: What is the name?

Mr. Gladstein: Pacheco (spelling) [205] P-a-c-h-e-c-o.

The Court: First name?

Mr. Gladstein: First name is Louis (spelling) L-o-u-i-s.

Q. (By Mr. Gladstein): You are the Louis Pacheco who is a defendant and cross-complainant in this action? A. Yes.

Q. Aren't you? A. That's right.

Q. Where do you live? A. Waialua.

Q. In the village itself? A. Yes.

Q. And do you live in a company owned house?

A. That is true.

Q. How long have you lived in that house?

A. Twenty-seven years.

Q. How much? A. Twenty-seven years.

Q. Twenty-seven years.

(Testimony of Louis Pacheco.)

The Court: Same house?

The Witness: Yes.

Q. (By Mr. Gladstein): Twenty-seven years in the same house? A. Yes.

Q. How long have you worked for the [206] Company? A. Seven and one-half years.

Q. Seven and one-half years. And I take it for twenty years before that you lived in that house as part of a family, the senior member of which was an employee of the Company; is that right?

A. That's right.

Q. Now, what is your job with the Company at the present time?

A. I am an agricultural control worker, in other words, a leaf sampler.

Q. Agricultural control worker?

A. That's right.

Q. Or leaf sampler? A. Yes.

The Court: Weed?

Mr. Gladstein: Leaf, I understood him to say.

The Witness: Leaf.

Q. (By Mr. Gladstein): A cane leaf sampler?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Is that job—is that what your job was called?

A. Yes.

Q. Were you doing that same job in 1946 and 1947? A. Yes, sir. [207]

Q. Is that right? A. Yes, sir.

Q. The other day you recall that you and I went

(Testimony of Louis Pacheco.)

over the following pages, these pages that I now show you, commencing at 650 to and including 660, and we reviewed those for a description of your work and for the number of hours that you worked, and whatever else is shown there; you recall that?

A. That's right.

Q. Now, Mr. Pacheco, is the statement correct that appears on page 660 which describes the work that you did during the period covered in this case?

A. That's right.

Q. And are the statements correct that showed the number of hours worked each day and each work week from the period November 18, 1946, to September 14, 1947, as shown there?

A. That's right.

Q. To the best of your recollection they are correct; is that right. A. That's right.

Q. You didn't keep notes of your own; did you?

A. No.

Q. Do you recall any instance where during that period you had occasion to report any inaccuracy in your wage payments or the number of hours shown that you had worked, to the Company? [208]

A. No.

Q. Did not? A. No.

Q. In other words, as those things were happening, or you got your pay check and totaled up the number of hours you worked, you were satisfied, were you, that those were correct?

A. Yes.

(Testimony of Louis Pacheco.)

Q. You kept no records of your own?

A. No.

Q. And do you have any exact recollection in your own mind as to how many hours you worked in a particular week as far back as that?

A. Mostly about 48.

Q. Mostly about 48. That is your general recollection; is that right? A. Yes.

Q. Do the figures and facts shown on pages 650 to 660, inclusive, agree with your best judgment and recollection? A. Yes.

Q. And you feel that they are correct, do you?

A. Yes.

The Court: That work of leaf sampler, is that described?

Mr. Gladstein: Yes, I am about to call your Honor's [209] attention to the duties. It can be very briefly stated.

The Court: Well, is there any claim that that is technical work?

Mr. Gladstein: There is some. There is a certain amount of chemical analysis in the laboratory. That is it. May I read what the stipulation says, your Honor?

The Court: Yes.

Mr. Gladstein: This litigant "collected daily samples of cane leaves from various fields on the plantation and prepared them for a foliar chemical analysis in the plantation laboratory for the purpose of determining the plant food requirements

(Testimony of Louis Pacheco.)

and the plant food status of each field of sugar cane on the plantation. After preparing the samples for analysis by an assigned technician, he returned to the main administrative office where he was engaged in clerical work pertaining to the assembly of laboratory information and its correlation with other growth factors and data which would permit the maintenance of a graphic log of all factors of weather, irrigation and fertilization which might affect the growth and production of sugar cane."

Q. (By Mr. Gladstein): Did you ever assist the chemist himself in making these analyses in 1946?

A. I did when Tony Rania was working there. I used to help him. [210]

Q. Tony Rania, who was he?

A. He was the chemist.

Q. And you used to act as his assistant?

A. He had a lot of work to do. I used to help him out.

Q. What did you do?

A. I used to help him prepare the samples and clean up the stuff he needed, so he would have materials to work with.

Q. What did that involve, preparing those samples? What did you do when you prepared a sample?

A. Well, just get it ready for him, like mix it up for him, and stuff like that.

Q. Do you chop it? A. No.

Q. Do you grind it? A. No.

(Testimony of Louis Pacheco.)

Q. Do you dry?

A. That is all done in the afternoon.

Q. I see.

A. That is done before it goes to be analyzed. You see, it is all ground up, then he has to weigh the sample in order to get the figures.

Q. Who does the chopping? A. I do.

Q. That is what I wanted to know. You did the chopping [211] of the samples?

A. That's right.

Q. Is that right? A. That's right.

Q. Who did the grinding? A. I did.

Q. Who did the drying? A. I did.

Q. And who did the weighing? A. I did.

The Court: Well, what did you weigh on, what type of scales or balances?

The Witness: Just a small scale.

The Court: What?

The Witness: Just a small scale.

The Court: Just a spring scale?

The Witness: Something like that.

The Court: What quantity did you weigh at one time?

The Witness: Gram.

The Court: What?

The Witness: Grams, sir.

The Court: A definite number of grams?

The Witness: Yes.

The Court: Did the chemist accept your weights?

The Witness: He did. [212]

(Testimony of Louis Pacheco.)

Q. (By Mr. Gladstein): Now, when you went out to get cane samples, I take it you had to go out in the fields?

A. That is in the morning.

Q. Will you tell us what that involved; what was your job?

A. Well, I have to go out and get so many stalks in certain fields and maybe there are five stalks to a field. It all depends on the variety of the cane in the field. Maybe there is two varieties, which I have to take ten stalks, and maybe it is the slopeness of the field, the area, how big the area is. Sometimes there is only one, sometimes two samples taken to it. There is five stalks to a field. So I have to go out and get the average stalk of the field.

Q. Get what? A. Average.

Q. In other words, you have to select——

A. Yes.

Q. (Continuing): ——a sugar cane stalk——

A. Stalk.

Q. (Continuing): ——as a sample which you judge to be average for a particular field?

A. That's right.

Q. Is that right? A. That's right.

Q. Who trained you in that? [213]

A. Well, the guy who worked before me trained me on it, see. It is usually like that.

Q. This analysis—where was the analysis of the cane leaf done?

(Testimony of Louis Pacheco.)

A. It was done in the laboratory.

Q. Is that still true today?

A. No, we don't have it no more.

Q. You don't?

A. No, we send it all to Honolulu now to be analyzed.

Q. Where does it go in Honolulu?

A. The Chemical and Fertilizer Company.

Q. I see.

Mr. Poole: How about the period covered by the Complaint?

Mr. Gladstein: He said it was done in the Plantation.

Q. (By Mr. Gladstein): Were any samples sent to the HSPA? A. It used to before.

Q. How about 1946 and 1947?

A. I think it used to be sent to HSPA to 1946 and 1947. Now it is sent to Chemical and Fertilizer Company.

Q. You don't know—— A. Not exactly.

Q. (Continuing): ——whether that is true, whether they send samples or not to HSPA; you wouldn't know that, would you? [214]

A. I do because I send the samples to town.

Q. You know you send the samples to this particular company? A. That's right.

Q. You don't know where they make their reports after that, do you? A. No.

Q. Is that so? A. That's right.

Q. What is the purpose of making these tests,

(Testimony of Louis Pacheco.)

or this analyisis, of what you have called the average cane stalk in a particular field?

A. Well, the purpose of taking the stalks is to be analyzed for the leaves. We take the nitrogen to see how much food the leaves have. We take just the bottom part of the leaf for sugar, potash and phosphorous to see how much food the cane in a certain field has. If it is not enough, they know just where to put it.

Q. What?

A. Where to put fertilizer and stuff like that.

Mr. Gladstein: I think that is all I have of this witness.

The Court: Well, tell me a little more about these scales that weigh by grams. Are they balances where you put——

The Witness: Yes, they have balances on [215] them.

The Court (Continuing): ——where you put the material to be weighed on one side?

The Witness: And the balances on the other.

The Court: And put little gram weights on the other?

The Witness: Yes.

The Court: Well, that is what I wanted to know. Now, did you take samples or specimens of soil?

The Witness: No, we have the other boys taking that.

Mr. Gladstein: I have no further questions, your Honor.

(Testimony of Louis Pacheco.)

Cross-Examination

By Mr. Poole:

Q. Mr. Pacheco, you stated, I believe, that one of the purposes of analyzing the cane leaf was to determine whether or not the cane field from which the cane came needed additional fertilizer?

A. That's right.

Q. Or whether the cane in that field needed additional food? A. That's right.

Q. After the analysis was made, you make a report, I take it, to the Plantation, or to the Waialua Agricultural Company?

A. We have a crop log that we put the figures in, which [216] show the scale, if it is going up or coming down.

Q. Yes. And do you turn over that log?

A. After the harvest. We have a crop log which we run through the blueprint machine.

Q. Yes.

A. And the Company has one and they send one out to Honolulu to Lewers & Cooke.

Q. Are the officials of the Plantation correlating the information on that log with the activities of fertilizing? A. Well, I guess they are.

Q. That is, when the log shows that additional fertilizer is needed, the officials of the Plantation decide that additional fertilizer should go onto the fields? A. I guess so.

Q. And you think, from your experience there,

(Testimony of Louis Pacheco.)

that they actually put on more fertilizer in the fields?

Mr. Gladstein: It might be that or many other things.

The Witness: Could be.

The Court: I suppose they take the recommendation of the fertilizer company.

Q. (By Mr. Poole): You don't determine whether additional fertilizer should go out?

A. No, I don't determine that, no.

Q. So far as you know, that determination is made by those in charge of handling the [217] fertilizing? A. That's right.

Q. On the Pantation? A. Yes.

The Court: Is that all?

Mr. Poole: Just a moment, your Honor. No further questions.

Mr. Gladstein: That is all, Mr. Pacheco, thank you.

(Witness excused.)

The Court: Before you call another witness, we will have to take a recess while I naturalize a class.

(Recess had.)

Mr. Gladstein: Mr. Reyher, will you take the stand, please.

ALFRED REYHER

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Just sit down, please.

Mr. Gladstein: Your Honor will find the facts pertaining to this litigant, Mr. Reyher, in the stipulation commencing at page 524 to and including page 539.

Direct Examination

By Mr. Gladstein:

Q. Mr. Reyher, your full name is Alfred Reyher, isn't it? A. Yes. [218]

Q. And you are the same Alfred Reyher who is a defendant and cross-complainant in this case; is that right? A. Yes.

The Court: How do you spell it?

Mr. Gladstein (Spelling): R-e-y-h-e-r. First name Alfred.

The Court: Yes.

Q. (By Mr. Gladstein): Where do you live?

A. Waialua.

Q. In the Plantation village? A. Yes.

Q. Are you in one of the Company owned houses? A. Yes.

Q. How long have you lived there?

A. Twenty-nine years.

Q. Twenty-nine years. How long have you worked for the Company?

A. About 25 years.

(Testimony of Alfred Reyher.)

Q. And you still work for them at the present time? A. Yes.

Q. What is your job with the Company?

A. I am a crane mechanic.

Q. Crane mechanic. In 1946 and 1947 did you work in the cane-loading machine repair shop?

A. Yes. [219]

Q. Now, I show you now certain pages that I have just designated for His Honor and ask you if these are the same pages, or duplicate copies of the same pages, that were shown you last week when I was out there to check on the accuracy of these statements.

The Court: Pages what?

Mr. Gladstein: 524 to 539, your Honor.

Q. (By Mr. Gladstein): They are the same, are they not? A. Yes.

Q. And at that time we went over the contents of these pages to see if they were true and correct; isn't that right? A. Yes.

Q. On the last two pages, beginning at 538 and going into 539, there is a description of the work and duties that you performed in 1946 and 1947 for this Company. You have read that and understand it, do you? A. Yes.

Q. Is that a correct statement of the work that you did during that time? A. Yes.

Q. In the pages that precede that, there is a week-by-week description of the number of hours that you worked each day and each week. To the

(Testimony of Alfred Reyher.)

best of your recollection are those figures and statements correct? [220] A. Yes.

Q. You are satisfied that they accord and are in agreement with your best judgment and recollection? A. Yes.

Q. They are all right. And the rate of pay; is that correctly shown? A. Yes.

Q. Is the amount of money that you received as wages correctly shown? A. Yes.

Q. Yes.

Mr. Gladstein: This employee, your Honor, worked on cane-loading machines which are described in some detail in the stipulation and essentially he was a mechanic who repaired these machines.

Q. (By Mr. Gladstein): Isn't that right?

A. Yes.

Q. Where did you do your work during that time?

A. During the off season all my work is done in the shop.

Q. During the off season it is done in the shop?

A. Yes.

Q. Which shop are you referring to?

A. Crane shop.

Q. Crane shop. Is that also known as the P. & H. shop? [221] A. Yes.

Q. During the grinding season where was your work done?

A. Sometimes I do my work in the fields when the machine has a break-down.

(Testimony of Alfred Reyher.)

Q. In other words, when a machine broke down in the field and couldn't be repaired by the people who were there, they would send for a mechanic, and you would be called and you would go out and do the repair job; is that right? A. Yes.

Q. Did you work during this period on machines other than the cane-loading machines or cranes?

A. Well, unless on the trucks.

Q. Trucks. Have you done work on heavy duty trucks? A. Well, I help the welder.

Q. Beg pardon?

A. Sometimes I help the welder.

Mr. Poole: What period of time?

Q. (By Mr. Gladstein): Whenever you did that—when did you do that? Do you recall what years? Have you done that recently? A. No.

Q. Not recently? A. No.

Q. Was that before 1946?

A. I think it was before 1946. [222]

Q. Before. All right, now you say you have repaired——

The Court: That is the welding?

Mr. Gladstein: Yes.

Q. (By Mr. Gladstein): You have done repair work on heavy duty trucks; is that right?

A. Those big trucks the Plantation uses.

Q. Big trucks. What were those big trucks used for? A. Carry labor.

Q. Yes. A. All sorts of stuff.

(Testimony of Alfred Reyher.)

Q. All sorts of stuff. How about supplies to and from town? A. They do.

Q. Those trucks are the ones that haul supplies to and from Honolulu; is that right?

A. Yes.

Q. All kinds of supplies? What kind of supplies?

A. I can't say because I am not there when they come in.

Q. What is a A. W-10?

A. That is those heavy duty trucks.

Q. That is the heavy duty truck?

The Court: Diesel?

The Witness: Yes.

Q. (By Mr. Gladstein): Diesel. And you did work on those, [223] repair work?

A. Well, just helping the welders.

Q. Helping the welders. What about the bodies of trucks, the truck bodies, did you do work to reconstruct or reconvert trucks? A. Yes.

Q. To reconvert from open to closed, and vice versa?

A. No, when they ordered new trucks we have to make a back part.

Mr. Poole: Your Honor, I think Counsel for the defendants should tie this down with respect to this period of time, because it is straying from the stipulation, and obviously the witness may have done this work he is testifying to, but didn't do it during the period in question.

The Court: Yes.

(Testimony of Alfred Reyher.)

Mr. Gladstein: I am showing his qualifications here.

Q. (By Mr. Gladstein): You are satisfied, Mr. Reyher, that the work that you did on machines, the repair work you did, is correctly shown, as far as the machines that you worked on, in the stipulation that I showed you, for that period of time?

A. Yes.

Q. That is right, isn't it? A. Yes.

Q. Did you work different shifts? [224]

A. No.

Q. One shift? A. Yes.

Q. All the time? A. Yes.

Q. What was the shift? A. Six to three.

Q. Six to three?

A. Or 6:30 to 3. I am not sure what time it was.

The Court: How much time off for lunch?

The Witness: Half an hour.

Q. (By Mr. Gladstein): Did you ever have occasion to do repair work on a P. & H. or cane loading machine that belonged to, or was being used by, an outside contractor other than Waialua?

A. I guess——

Mr. Poole: During this period of time?

Mr. Gladstein: First of all I want to find out whether he ever did.

The Witness: I think that was before 1946.

Mr. Poole: I certainly object to it now. We have one period of time involved in this suit.

The Court: Objection is sustained unless it is connected with this time in question.

(Testimony of Alfred Reyher.)

Q. (By Mr. Gladstein): Now, in connection with your [225] job of repairing these cane loading machines, Mr. Reyher, did you perform that work in the P. & H. shop only, or did you go from that shop to other parts of the Company's property?

A. Out in the field, yes.

Q. Oh, yes, you have already said out in the field; that is so. Did you ever go to the machine shop? A. I take parts there to be done.

Q. In other words, as a part of your repair work, from time to time, as the need arises, you would take parts to the machine shop; is that right?

A. Yes.

Q. And for what purpose would you do that?

A. Well, because they have the tools there to use.

Q. Tools to do what? A. To do our work.

Q. What kind of work? A. Press.

Q. Press what?

A. Hydraulic press, to press our shafts in.

Q. To press your shafts in. Any other parts?

A. No.

Q. What about hubs?

A. Just to press our shafts.

Q. Did you ever have occasion, during this period, to [226] go to the machine shop in regard to the repair of hubs or gears or other portions of the machine? A. No.

The Court: Those are the things that would be pressed upon the shaft.

Mr. Gladstein: I guess that is correct, too.

Q. (By Mr. Gladstein): In the machine shop

(Testimony of Alfred Reyher.)

they tool this equipment, do they, to fit the P. & H. machine?

A. Some of them, they make them there, yes.

Q. Some they do. Or they try to repair and salvage old parts, I suppose; is that right?

A. Some they salvage.

Q. And you, in your own work, in addition to the repair work that you have described, did you do any assembling of various parts of these P. & H. machines? A. Yes.

Q. You did. That was part of your work done during this period of 1946 and 1947? A. Yes.

Q. Now, it appears that during the period we are concerned with there were a lot of weeks when you worked 48 hours. Did you get straight time for those 48 hours? A. Yes.

Q. You didn't get any time and a half overtime for hours after 40, did you? [227] A. No.

Q. When did you get overtime, after 48 hours?

A. After 48 hours.

Q. In a week, that is? A. Yes.

Q. Or if you worked more than eight hours in a day; is that right? A. Yes.

Q. What about the off-season? Did you get overtime in the off-season, after 40 hours, I mean?

A. No.

Q. It was the same thing whether it was off-season or grinding season; is that right?

A. Yes.

Q. Is that right, sir? A. Yes.

Mr. Gladstein: I have no further questions.

Mr. Poole: I have two questions.

(Testimony of Alfred Reyher.)

Cross-Examination

By Mr. Poole:

Q. You spoke of doing most of your work in the P. & H. shop. Isn't it true that the Plantation normally refers to that, or frequently refers to it, as the cane loading repair shop?

A. Yes. [228]

Q. That is, it is in that shop where the cane loading machines are repaired? A. Yes.

Mr. Gladstein: It is just, as I understand from the testimony, that the men call it P. & H. shop.

Mr. Poole: Yes, I want to make it clear for the record. Apparently they call it P. & H. repair shop.

The Court: That is the first thing he testified to; it was the cane loading repair shop.

Mr. Poole: Yes, that is what is done, and that is what the shop is called by the Plantation.

Q. (By Mr. Poole): I am not sure, from the way your testimony stands, as to when you may have done some repair work on heavy trucks. You stated that you had read over the stipulation, or the statement in this document, with respect to your activities and that it was correct, and I think at another time you stated that during this particular period of time——

Mr. Gladstein: He just said he has done it, and he thought prior to 1946. The testimony is not inconsistent with the stipulation but shows the man's qualifications and what he has been called on to do, nature of the job.

(Testimony of Alfred Reyher.)

Mr. Poole: Your Honor, I want to find out from the witness again as to whether during the period of time covered by the suit, which was from November 20, 1946, to September 14, [229] 1947, he has any definite recollection of having repaired heavy trucks during that period.

Mr. Gladstein: It doesn't show in the stipulation.

Mr. Poole: No.

Mr. Gladstein: Whatever it shows there he agrees that is correct.

Q. (By Mr. Poole): You don't recall definitely that you did that type of work back during that particular period of time?

A. The heavy duty trucks?

Q. Yes. A. The DW-10's?

Q. Yes, during this period. I am not asking whether you ever did it. I am willing to concede you probably did it sometime.

A. It is hard for me now, but I think it was before that.

Q. Before that? A. Yes.

Mr. Gladstein: That is what I understood his testimony to be.

Mr. Poole: No more questions.

The Court: You are excused.

(Witness excused.)

The Court: How many more witnesses do you have? [230]

Mr. Gladstein: Taking a guess I would say about 15, your Honor. I will try to speed it up. I would

say somewhere between 10 and 12 more, your Honor.

The Court: Yes.

Mr. Gladstein: We won't finish with them all today, perhaps, but we can do most of them.

Mr. Robello.

SERAPHINE ROBELLO

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Just sit down, please.

Mr. Gladstein: Your Honor will find the facts in the stipulation concerning Mr. Robello at pages 440 to 453, inclusive.

Direct Examination

By Mr. Gladstein:

Q. Your true name is Seraphine Robello; isn't that right? A. Yes.

The Court: Seraphine?

The Witness (Spelling): Seraphine.

Mr. Gladstein (Spelling): S-e-r-a-p-h-i-n-e.

The Witness: R-o-b-e-l-l-o.

Q. (By Mr. Gladstein): You are the same Seraphine Robello who is a defendant and cross-complainant in this case, [231] are you not?

A. Yes.

Q. Where do you live, Mr. Robello?

A. Waialua, one of the Plantation homes.

Q. How many years have you lived there?

A. Forty-five years.

(Testimony of Seraphine Robello.)

Q. And how many years have you worked for the Company? A. Twenty-eight years.

Q. And prior to the time that you went to work for the Company, were you a member of a family, the head of which was working for the Company?

A. Yes.

Q. What is your present job?

A. Head power plant operator, electrician journeyman.

Q. You are the head power plant operator; is that right?

A. Electrician journeyman. That is the title that I have right now.

The Court: Head——

The Witness: Power plant operator.

Q. (By Mr. Gladstein): Head power plant—is it head power plant operator and electrician journeyman? A. That's right.

Q. How long have you worked at the power house? A. Twenty years.

Q. And approximately where is that power house located [232] with reference to the mill?

A. It is located about the center of the factory and the mill. It is between the engine room and the boiling house.

Q. Now, you were shown these pages, or duplicate pages, duplicate to pages 440 to 453, of this stipulation, last week. Do you recall that?

A. Yes.

Q. And I call your attention to the fact that the

(Testimony of Seraphine Robello.)

last three pages of those, commencing at 451, give a description of the work and duties that you performed during the years 1946 and 1947. Do you recall that? A. Yes.

Q. And we went over that together, did we not?

A. Yes, we did.

Q. Are you satisfied that what appears on those pages accurately and truthfully sets forth the work and the duties that you performed during that period? A. That's right.

Q. On the preceding pages there is set forth, week by week, the number of hours that you worked each day of each week from November 18, 1946, to September 14, 1947. Are you satisfied that the data contained on those pages is correct?

A. Yes. [233]

Q. Does it accord with your best recollection and judgment?

A. I have no records to prove that that is correct, but I think I have confidence enough in the Company that whatever statement they have there is correct.

Q. And your own remembrance of the number of hours that you used to work during that period, is it in accord with what appears in these pages?

A. That's right.

Q. Now, of course, as you say, you kept no records, and do you remember exactly how many hours on a particular day you worked for them? You don't, do you? A. No.

(Testimony of Seraphine Robello.)

Q. But did you ever have occasion, when you got your pay check, you looked at the pay check and the hours, the number of hours, did you ever have occasion to complain to the Company that there was a mistake?

A. Well, as far as keeping my time and checking my pay at the end of the month, I was very particular about that. It happened one or two times, accidentally, through the timekeeper, or somebody, there was an error made on them, but when I called their attention to it, they checked the thing out and the following month I got the money coming to me.

Q. So it was corrected?

A. Yes. That was not done intentionally, [234] but accidentally through an error.

Q. So you are satisfied that the records, after you called their attention to these things, are correct? A. Yes.

Q. And this material taken from those records is reliable? A. It is.

Q. It shows here that in a number of weeks you worked 48 hours, or sometimes 67 hours in a week, sometimes as many as 80 hours in a week, sometimes 89 hours in a week. During those weeks when you worked more than 40 hours did you get overtime for the hours between 40 and 48?

A. Anything over 40 hours.

Q. Anything over 40 hours you got time and a half; that was always true?

A. That was true.

(Testimony of Seraphine Robello.)

Q. You mean over 40 or 48?

A. During the off-season.

Q. During the off-season?

A. During the grinding season anything over 48 hours.

Q. That is what I wanted to get to. Anything over 40 hours during the off-season you got overtime? A. That's right.

Q. Anything over 48 hours during the grinding season you got overtime? [235]

A. That's right.

Q. Is that right? A. That's right.

Q. And when the grinding season was on, you got no overtime at all for the hours between 40 and 48; is that right? A. That's right.

Mr. Gladstein: I might say, your Honor, that this is as the job description shows on page 451, and so on. This is a very responsible job and the duties, I think, are quite impressive. I am not sure and I don't make this as a representation of fact, but I think that the power generated under this man's control is probably greater than that of many towns and municipalities.

Q. (By Mr. Gladstein): Among the machines that you operate in your work, could you list some of those machines that you have charge over and operate? A. We have a 2500 KVA turbine.

The Court: I don't know that it would be helpful to me. You say it is set out in the stipulation in the description?

Mr. Gladstein: Yes, it is.

(Testimony of Seraphine Robello.)

The Court: What is this witness' hourly wage?

Mr. Gladstein: The witness' hourly wage at the commencement of the proceedings was $1.50 and then during the period we are concerned with there was a wage raise of [236] 5 cents an hour for him so that that was effective on the first of August, 1947, so that thereafter he got $1.55 an hour.

Q. (By Mr. Gladstein): Am I right about that?

A. That's right.

Q. You operate the bleeder and the turbines and the engines?

A. The bleeder turbine is 2500 kilowatt. We would have two 500 kilowatts driven by a Corliss compound engine. The only three machines we have in there.

Q. Well, where are they located?

A. Right in the power house, about the center of the mill, between the boiling house and the engine room.

Q. Did you ever service air compressors outside the plant?

A. Yes, we have an air compressor that we are in charge of. That is between 50 and 75 feet away from the power plant. That is located in the boiling house.

Q. Yes.

A. And we look after the air compressors. We service them, and every month we take the valves out and check them for carbon. We clean the valves and replace new channels if there is any there.

(Testimony of Seraphine Robello.)

Q. You were doing that in 1946 and 1947?

A. Yes.

Q. To what portions of the Company's operations was [237] air supplied by these compressors?

A. Throughout the factory, including the shops.

Q. The garage, for example?

A. The garage, machine shop, and all the factory.

Q. Where are those compressors located?

A. In the boiling house.

Q. In the boiling house. Is that outside the mill itself?

A. It is right in the mill, right next to the power house—the power plant; I would say 50 to 75 feet away from the power plant.

Q. Is any of your work done outside of the mill building itself?

A. It is all done in the mill building.

The Court: You have nothing to do with the electrical distribution; you just manufacture it through your generator?

The Witness: We have our generators there and switchboard. We also look after the switchboards. We have all the different circuits—different panels throughout the Company, that is, throughout the pumping stations and camps, and so forth.

Q. (By Mr. Gladstein): How often did you do this work that you have referred to of servicing or repairing air compressors? [238]

A. Somewheres around eight years since we took over.

(Testimony of Seraphine Robello.)

Q. I beg your pardon?

A. About eight years.

Q. That isn't what I mean.

A. Beg pardon?

Q. Do you do that now?

A. Yes, I do, throughout the year, during the off season and grinding season.

Q. How often?

A. We stop and start when it is needed. We keep them oiled and service them at least once a month. We have to change the oil and check the valves, and stuff like that.

Q. Once a month? A. Yes.

Q. So, in other words, three weeks would go by when you would have nothing to do with air compressors, and one week you would?

A. That's right.

Q. When did you start doing that work?

A. You mean on the air compressors?

Q. Yes.

A. When we took over the air compressors?

Q. When did you, yourself, start performing the work of servicing or repairing the air compressors? About how long back? [239]

A. About eight years ago when we took over the compressors.

Q. W..om did you take it over from?

A. The boiling house oilers used to be in charge of that.

Q. The boiling house oilers?

A. That's right.

(Testimony of Seraphine Robello.)

Q. And then the work was transferred to you?

A. To the power plant.

Q. How regular—can you tell me this, Mr. Robello: How regular is this service? Is it once a month? Does it run once every month?

A. It runs right through, but I mean the real service of changing oil in the crankcase and checking valves, it has to be done at least once a month, but oiling up the lubricators, supplying oil to the cylinders and valves, we do that every day.

Q. Every day? A. Every day.

Q. Do you, yourself, participate in that?

A. I take part in it myself.

Q. Who else takes part?

A. My assistant and the oiler.

Q. The oiler.

The Court: Well, this compressor, it is motivated by an electric motor? [240]

The Witness: It is driven by an electric motor, and it supplies compressed air throughout the factory and shops.

The Court: And how many hours a day does that work?

The Witness: Twenty-four hours.

The Court: It keeps the pressure in a tank?

The Witness: Storage tank, yes.

The Court: And it automatically shuts off the compressor?

The Witness: It doesn't shut off the compressor, but it cuts off the suction off the valve when the

(Testimony of Seraphine Robello.)

pressure gets up—to be exact it gets up to 98 pounds. It automatically cuts off the suction and the compressor just idles, and when the pressure drops off to 90 pounds it cuts in again. The compressor itself runs 24 hours a day.

The Court: What horsepower motor have you on the compressor?

The Witness: It is about a 60 horsepower.

The Court: Sixty. The mill uses it practically constantly while it is running?

The Witness: That's right.

The Court: That runs through off season as well?

The Witness: During the off season when there is no repairs after 3:30 we shut the compressor down. We will have to have it on again before 6:30 in the morning. But during the grinding season the compressor is on for 24 hours. [241]

The Court: You say that distributes air to the various outside shops?

The Witness: That's right.

Q. (By Mr. Gladstein): What use is made of that air?

A. For instruments in the boiling house to operate the level of the juices, and they use it for chipping the rollers.

Q. That is in the mill itself?

A. That's right.

Q. What use is made of the air in your service shops?

(Testimony of Seraphine Robello.)

A. Using for—use in grease guns to grease the trucks and automobiles.

The Court: Paint?

The Witness: Paint.

Q. (By Mr. Gladstein): Spray painting?

A. Yes.

Q. Is that right? A. Yes.

The Court: Now, your power plant, that is the main power plant, operates the entire mill?

The Witness: That's right.

The Court: Conveyors and everything?

The Witness: That's right.

The Court: Does that extend outside of the mill?

The Witness: We run in parallel with the utility [242] company, which is the Hawaiian Electric Company. All we do, we carry a block load. What I mean by that, we have three units there. The capacity is 3,500 kilowatts. If we have a load of 3,000 kilowatts and then we only generate 2,500, we are purchasing the rest from the Hawaiian Electric Company.

The Court: Yes.

The Witness: And if we have a load of 2,500 and we are carrying 3,000 kilowatts, we are feeding back to the Hawaiian Electric Company automatically. We are either purchasing from the Hawaiian Electric or feeding back to their system.

The Court: How is a record kept of that?

The Witness: We have a log there. We have

(Testimony of Seraphine Robello.)

instruments to indicate whether we are purchasing or feeding back to the Hawaiian Electric Company.

Mr. Poole: The record on that log is in the stipulation.

Mr. Gladstein: And it bears out the testimony of the witness as he gives it.

Mr. Poole: It starts on page 52.

Q. (By Mr. Gladstein): Tell me, Mr. Robello, is part of the power used in the mill driven from steam?

A. Well, all of our generators, we have steam engines and steam turbine. It is driven by steam.

The Court: Being in charge of the entire power plant [243] puts you in charge of the boiler room?

The Witness: No, that is separate. I am not in charge of the boiler room. We have separate boiler room. I have nothing to do as far as the boiler room is concerned.

The Court: What is the principal fuel?

The Witness: We use bagasse instead of fuel oil.

The Court: No fuel oil.

The Witness: Very seldom when we use fuel oil.

The Court: You are equipped for it?

The Witness: We are equipped for it, but very seldom we use it.

The Court: Do you have to cut in other boilers?

The Witness: No, we use bagasse.

Q. (By Mr. Gladstein): Do you mind saying what is meant by "bagasse"?

(Testimony of Seraphine Robello.)

A. Grinding the cane whatever trash is left—we call that trash or bagasse.

Q. It is the by-product after grinding the cane?

A. Yes.

The Court (Spelling): B-a-g-a-s-s-e.

Q. (By Mr. Gladstein): The servicing of these compressors, what does that consist of?

A. Well, we have a crankcase there. As I said, at least once a month we would have to take all of the oil out. [244]

Q. Once a month you do a thorough job?

A. That's right.

Q. How long does that take?

A. Takes about an hour and a half.

Q. Hour and a half. But you say that every day you do some servicing of these compressors?

A. Oiling the lubricator. That takes only about two or three minutes.

Q. How often each day do you do that?

A. Each shift, about every eight hours.

Q. Anything else you do in connection with these compressors?

A. We go around about every two hours to see everything is o.k.

Q. You do at regular intervals of two hours check them and see whether or not they need oiling or any other attention? A. That's right.

The Court: No separate employee in charge of the compressor?

The Witness: Beg pardon?

(Testimony of Seraphine Robello.)

The Court: No separate employee in charge of the compressors?

The Witness: That's right.

The Court: Where do you say they are located?

The Witness: In the boiling house, between 50 and [245] 75 feet away from the power plant.

Q. (By Mr. Gladstein): You do all this work?

A. I have an assistant.

Q. You and your assistant, two of you, do all this work you described in regard to the air compressors?

A. That's right, each operator and his assistant day by day in his shift.

Q. And on your shift you and your assistant do it? A. That is correct.

Q. Is that correct? A. That is correct.

Mr. Gladstein: I think that is all the questions I have, Mr. Poole. Does your Honor have any further questions?

The Court: No.

Mr. Poole: I have one question.

Cross-Examination

By Mr. Poole:

Q. Mr. Robello, isn't it a fact that the rollers in the mill are steam driven and not electrical driven?

A. Yes, steam driven is correct.

Q. So it isn't true that the entire mill, the machinery in the mill, is driven by electricity?

A. No, it is electricity and steam.

(Testimony of Seraphine Robello.)

Q. The steam which drives the mill machinery first passes through a turbine and generates electricity? [246] A. That's right.

Q. And it is bled off and thereafter goes on and performs its function of driving the machinery?

A. That is not true.

Q. That is not true? A. It is not.

Q. Would you explain what happens.

A. The live steam comes in through the turbine. We have a condenser there. We either bleed or exhaust steam or it can run straight condensed. Whatever steam comes in the turbine, it either bleeds out at the boiling house—it doesn't drive any machinery at all. It does not drive any machinery at all because we haven't got a mixed pressure, but a bleeder, if you had a mixed pressure turbine, you would be able to do it, but we haven't got that machinery.

Q. What happens to the steam?

A. It goes to the boiling house, the evaporators.

Q. I see.

The Court: The exhaust from your other engines, your piston engines——

The Witness: That is exhausted to the boiling house also.

The Court: Good.

The Witness: Save a lot of money.

Mr. Gladstein: Thank you, Mr. Robello. [247]

(Witness excused.)

Mr. Gladstein: I call Mr. Sunahara.

FUMIO SUNAHARA

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Mr. Gladstein: Your Honor, this witness' name is (spelling) S-u-n-a-h-a-r-a, and the first name is Fumio (spelling) F-u-m-i-o. Have I pronounced it correctly?

The Witness: Yes.

Direct Examination

By Mr. Gladstein:

Q. And you are the Fumio Sunahara who is one of the defendants and a cross-complainant in this case, are you not? A. Yes.

Q. Is that right? A. Yes.

Q. Where do you live, Mr. Sunahara?

A. Waialua.

Q. In the Plantation village? A. Yes.

Q. How long have you lived there?

A. Since 1924.

Q. Nineteen—— A. 1924.

Q. 1924. That is 26 years ago? [248]

A. Yes.

Q. When did you first start working for the Company? A. 1930.

Q. 1930? A. Yes.

Q. And you have worked continuously for them since? A. Yes.

Q. And you are a welder, aren't you?

A. Yes.

(Testimony of Fumio Sunahara.)

Q. And that is your job now? A. Yes.

Q. You work in the welding shop; is that right?

A. Yes.

Q. How long have you worked in the welding shop? A. Since 1939 I think.

Q. Take your hand away so we can hear you.

A. Since 1939.

Q. Since 1930? A. Nine.

Q. Thirty-nine? A. Yes.

Q. What was your job before 1939?

A. I was in the crushing plant.

Q. In the crushing plant?

A. Crushing plant. [249]

Q. And beginning in 1939 you became a welder; is that right? A. Yes.

Q. And you have been a welder employee of the Company ever since? A. Yes, sir.

Q. During the period——

Mr. Gladstein: Withdraw that.

Q. (By Mr. Gladstein): I am going to show you pages 486 to and including 505 of the stipulation, and I will ask you if you have seen these pages, or duplicates of these pages, before?

A. No, I haven't seen them.

Q. Last week?

A. Only last week I saw them.

Q. You saw these last week, did you not?

A. Yes.

Q. And we went over these to see whether or not they correctly set forth your duties; isn't that correct? A. Yes, sir.

(Testimony of Fumio Sunahara.)

Q. Now, commencing on page 501 and going on to the end of 505, there is set forth a description of what kind of work you did during the period in 1946 and 1947 that is covered in this case. You read that and understood it, did you? [250]

A. Yes, sir.

Q. Are you satisfied that those pages correctly state what you did and what your work was?

A. Yes, sir.

Q. Is there any doubt in your mind about it?

A. No.

Q. So they do correctly set it forth; is that right? A. Yes.

Q. So in the pages before that, beginning page 486, you remember we went over these week by week tabulations of the hours that you worked and your rate of pay and how much wages you got; do you recall that? A. Yes.

Q. Did you keep records of how many hours you worked each week? A. No sir.

Q. Do you remember exactly how many hours you worked in a particular week in 1946 and 1947?

A. No.

Q. You don't remember that, do you?

A. No.

Q. But as you looked through these pages with me, were you satisfied that these pages appeared to be correct to you? A. About correct.

Q. Approximately; is that right? [251]

A. Yes.

(Testimony of Fumio Sunahara.)

Q. And as far as your best judgment and remembrance are concerned, you would say that these are correct; is that right? A. Yes, sir.

Q. Now, there were many weeks here when you worked more than 40 hours; you worked 48; you worked 50, you worked 59½, and so on. During those weeks did you get overtime for your work for hours between 40 and 48, or did you get straight time? A. Straight time.

Q. Straight time. And the only time you got overtime is when you worked more than 48 hours or more than eight hours in one day; is that right?

A. Yes, sir.

Q. Or if you were called on your day off when you were supposed to be resting and they put you to work, you got overtime for that day; is that right? A. Yes.

Q. Otherwise, when you worked from 40 to 48 hours a week on an 8-hour-a-day schedule they gave you just straight time; is that right?

A. Yes, sir.

Q. Was that true in the off season and grinding season?

A. In the off season we had 40 hours. [252]

Q. In the off season you were paid overtime after 40 hours; is that right? A. Yes.

Q. But in the grinding season you didn't get overtime until after 48 hours; correct?

A. Yes.

Q. Now, your work as a welder, where did you do that work? A. Mostly in the shop.

(Testimony of Fumio Sunahara.)

Q. In what shop? A. Welding shop.

Q. Welding shop. There was a special shop that was known as the welding shop; is that right?

A. That's right.

Q. That was outside the mill, was it?

A. No, side of the mill.

Q. What was it, inside or outside?

A. Outside.

Q. Outside, but close by? A. Close by.

Q. In other words, it was not inside the mill building, was it? A. No.

Q. It was outside the mill building?

A. Yes. [253]

Q. Is that right? A. Yes.

Q. Now, on the occasions when you did your work as a welder outside the welding shop, where did you do it? Where did you go? Some other shop or the mill or what?

A. When we go outside the welding shop, we go to the mill, to the field, sometimes to outside shops.

Q. Whenever you did that, that would be shown on a time sheet as to where you went, and it would be shown if you did that in 1946 and 1947, it would be shown in these pages I asked you about; correct?

A. Yes.

Q. When the grinding season is on, what is most of your work, on what kind of equipment?

A. Most of the work is on making some new parts for the mill.

Q. Mill? A. Yes.

(Testimony of Fumio Sunahara.)

Q. Most of your work is for the mill equipment, making new parts or repairing parts?

A. Repairing parts and if I am not mistaken, I think they are divided into one-third, about one-third the mill and maybe two-thirds is outside jobs.

Q. About one-third is for mill equipment and two-thirds outside. What goes into the oustide job? What kind of [254] equipment?

A. Making new forms, concrete forms.

Q. Concrete forms?

A. New forms, pipes, new buildings.

Q. New buildings?

A. And repairs, auto and trucks.

Q. Welding pipe for buildings; is that what you said? A. No, welding pipe for siphons.

Q. What kind of work did you do in regard to buildings?

A. Making new shops or repairing old shops.

Q. What? A. Shops.

Q. Making new shops?

A. Extending the buildings out.

Q. Extending the buildings? A. Yes.

Q. Enlarging some of the shops?

The Court: Structural work.

Q. (By Mr. Gladstein): Well, whenever that construction was done, why a record was made of it?

A. Yes.

Q. And if you did any in 1946 and 1947, in the period we are concerned about, it would be shown here; is that right? A. Yes. [255]

(Testimony of Fumio Sunahara.)

Q. Is this welding shop—in 1946 and 1947 I am talking about. Now, did this welding shop you worked in do all the welding that had to be done anywhere on the Plantation or in the village or in the administration buildings or in the mill, or anywhere else? A. No.

Q. Was there welding done elsewhere?

A. Because there are two welding shops.

Q. Are there two? A. Yes.

Q. Which one did you work in?

A. I work in the main one.

Q. Main one? A. Yes.

Q. What was the other one called?

A. The other one is the one in the crane shop.

Q. Well, in other words, in that cane loading or tractor shop they did welding on the cranes and the cane loading machines; is that right?

A. That's right.

Q. Outside of the work that they did, did your shop do all the rest of the welding? A. Yes.

Q. The rest of the welding that was done anywhere, that was required by the Company? [256]

A. Yes.

Q. During the war did you work——

Mr. Gladstein: Withdraw that.

Q. (By Mr. Gladstein): In 1946 and 1947 did you do welding work on the tractors or P. & H. machines? A. I did.

Q. In 1946 and 1947? A. Yes.

Q. Have you done it since?

(Testimony of Fumio Sunahara.)

A. No, sometimes they come in as a part.

Q. Oh, just a part? A. Parts come in.

Q. During the war did you work in the P. & H. shop? A. I can't recall that.

Q. You can't recall. Did you work in the tractor repair shop at all? A. I can't recall.

Q. Or did you work out in the fields?

A. That I can't recall.

Q. You don't remember that? A. No.

Mr. Poole: Well, there is no issue on that, your Honor. It is set forth that many of these things he did, and they are in the record.

The Court: Yes. [257]

Mr. Poole: They are shown on the time sheets.

The Court: You do mostly electrical welding?

The Witness: Both electric and acetylene.

The Court: Acetylene?

The Witness: Yes.

The Court: For your outside jobs you use acetylene?

The Witness: No, on the outside jobs we use most electric. We have got portable welding machines running by gasoline.

The Court: Generator?

The Witness: Generator run by gasoline.

The Court: That is on a unit on a little truck?

The Witness: Yes.

Q. (By Mr. Gladstein): Mr. Sunahara, did the Company ever send you out to do field work so as to get an exemption for you as an agricultural employee during the war?

(Testimony of Fumio Sunahara.)

Mr. Poole: I object to that question. Would you read the question back?

The Court: I don't see any purpose of it during the war.

Mr. Gladstein: It is true we are concerned with the 1946 and 1947 period, and I do not say this testimony would be decisive, but I am saying to the Court, my purpose is this: My understanding is during the war, for the purpose of preventing a depletion of its labor force, the Company would send [258] out welders and men in occupations such as this witness, send them out in the fields to do agricultural work for short periods of time so that they would classify as agricultural workers, and the Selective Service authorities were not drafting agricultural employees into the Army. I don't say that it would be decisive.

The Court: One person here or there might criticize the Company for doing that. Another person——

Mr. Gladstein: It is not meant by way of criticism.

The Court (Continuing): ——might say, well, that is just self-protection; that is good business. So where does that get you?

Mr. Gladstein: All right. I have no further questions of Mr. Sunahara.

Mr. Poole: No questions, your Honor.

The Court: Well, we will take an adjournment until tomorrow morning.

(Witness excused.)

Mr. Poole: It is only 25 to twelve.

The Court: Well, we will take a little recess.

(Recess had.)

Mr. Gladstein: Call Mr. Watanabe to the stand.

TADAO WATANABE

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Just sit down, please. [259]

Mr. Gladstein: Your Honor, you will find the portion of the stipulation dealing with this witness commencing at page 146 and ending at 163, inclusive. The witness' name is Watanabe (spelling) W-a-t-a-n-a-b-e. First name, Tadao (spelling) T-a-d-a-o. How do you pronounce it?

The Witness: Tadao.

Mr. Gladstein: Tadao.

Direct Examination

By Mr. Gladstein:

Q. Mr. Watanabe, you are the Tadao Watanabe who is one of the defendants and cross-complainants in this case, aren't you? A. Yes.

Q. Where do you now reside?

A. Waialua.

Q. In the Plantation village? A. Yes.

Q. Do you live in one of the Company's homes?

A. Yes.

Q. And how long have you lived there?

A. Five years.

(Testimony of Tadao Watanabe.)

Q. Five years. Where did you live just before that? A. I lived outside.

Q. You lived outside? A. Yes. [260]

Q. Prior to five years ago? A. Yes.

Q. Now, you have been working for the Company for some time, haven't you? A. Yes.

Q. How long? A. Seventeen years.

Q. Seventeen years. According to this description here in the pages I refer to, you are a rake operator; right? A. Yes.

Q. And were you holding down that same job in the years 1946 and 1947? A. Yes.

Q. Now, the other day we went over this group of pages or a duplicate set, together. You recall that? A. Yes.

Q. Now, showing you the pages that commence at 162 and 163, you read those, and did you understand them? A. Yes.

Q. And do they correctly set forth the duties and the work that you performed for this Company in the period from November 18, 1946, to September 14, 1947? A. Yes.

Q. They do? Is that right? A. Yes. [261]

Q. In the pages just before page 162 there is set forth, week by week and day by day, a tabulation of the hours of work that you put in for the Company in that same period. You see that, don't you?

A. Yes, sir.

Q. Did you keep a record of those hours for that period? A. No, sir.

(Testimony of Tadao Watanabe.)

Q. Do you have any remembrance right now of how many hours you worked in any particular day way back there? A. I cannot.

Q. You cannot recall that. All right. But in going over these pages, did you come to the conclusion that according to your best judgment and recollection the figures and statements made on these pages in this stipulation are true and correct?

A. Yes.

Q. And you are satisfied that they correctly state the number of hours each day and each work week that you worked during that period; is that right? A. Yes, sir.

Q. What about the rate of pay; is that correctly set forth? A. Yes, sir.

Q. And what about the wages that you received each week; is that right? That is, is it set forth correctly as [262] to what you got? A. Yes.

Q. There are also in these pages, from 146 to 161, inclusive, in a number of different weeks there are statements as to the number of hours that you worked on a particular tractor, for example, number 116 or 117 or 130, things like that. You can't remember now, can you, exactly how many hours you put in on number 116 in a particular week, can you?

A. No.

Q. No. But you do know that you did work in that period covered by the stipulation, you did work on those tractors and those machines, as is shown here; isn't that right? A. Yes, sir.

(Testimony of Tadao Watanabe.)

Q. And when you did that work, is it true that a record was made at the time of how long you worked on a particular machine? A. Yes.

Q. And if it was 116, they would put down the number of hours that you worked on that machine; is that right? A. Yes.

Q. And are you satisfied——

The Court: All these answers were "yes"; I don't know how the reporter could hear them.

Q. (By Mr. Gladstein): And are you satisfied that the [263] statements that are made throughout this stipulation regarding the machines that you worked on and the number of hours you worked on them and what they were used for are true and correct? A. Yes, sir.

Q. Now, there are many weeks here when you worked more than 40 hours; you worked 48 hours, you worked 52 hours, there were times when you worked even more than that in a work week. Did you get overtime at all? A. After 8 hours.

Q. After 8 hours a day? A. Yes.

Q. And how many hours a week did you have to work before you got overtime?

A. Forty-eight.

Q. Forty-eight. And was that true in the grinding season and in the off season?

A. In the grinding season we don't work in the shop. We work outside.

Q. In the grinding season you worked outside?

A. Yes.

(Testimony of Tadao Watanabe.)

Q. Where? In the fields? A. Yes.

Q. And when did you start to get overtime during the grinding season?

A. After 48 hours. [264]

Q. So you didn't get any overtime for the hours between 40 and 48; is that right? A. Yes.

Q. What about the off season? Did you get overtime after 40 or 48? A. After 48.

Q. So at no time did you get overtime for hours between 40 and 48 per week; is that right?

A. That would be right.

Q. Unless you worked more than eight hours in a day or you worked on your day of rest; is that right?

A. Only time we get 40 hours is if you work in the mill.

Q. In the off season if you work in the mill?

A. They pay you for that.

Q. And did you work in the mill? A. No.

Q. You did not. During the off season where did you do your work?

A. In the tractor shop.

Q. Now, during the grinding season there were many times when you repaired tractors; isn't that right? A. Yes, sir.

Q. That is, in the same period we are talking about, 1946 and 1947; is that right? [265]

A. Yes, sir.

Q. Now, where did you make those repairs, in the field or in the tractor shop or where?

(Testimony of Tadao Watanabe.)

A. It depend on the place where the tractor is. If it is in the field, we do it in the field. If we cannot do it in the field, be bring it in the tractor shop.

Q. And you would on occasion do work in the tractor shop itself? A. Yes.

Q. Did you ever do repair work in any other shop except the tractor shop?

A. Mostly it is done in the tractor shop.

Q. What is that?

A. It is in the tractor shop.

Q. It is in the tractor shop. When you worked in the tractor shop, what were you, a mechanic or a helper or what? A. Helper.

Q. A mechanic's helper? A. Helper.

Q. In other words, you did mechanical work, helping the mechanic who was regularly employed in the shop; is that it? A. Yes, sir.

Q. Is that right? A. Yes.

Q. What did you do during this period when it rained [266] and you could not operate the rake out in the fields?

A. Well, it depend on the Company. They might send us in the shop to help them out, but otherwise we have to go on some other job.

Q. To do what?

A. To do some other odd jobs.

Q. To do some other odd jobs. And were those jobs repair work, overhauling of any kind?

A. If we do go in the shop.

Q. In the shop? A. We do.

(Testimony of Tadao Watanabe.)

Q. You did overhaul work and repair work?

A. If they have to overhaul tractors, we help.

Mr. Gladstein: I think that is all. Any questions your Honor?

The Court: No.

Mr. Poole: No questions.

Mr. Gladstein: That is all, Mr. Watanabe. Thank you very much.

(Witness excused.)

Mr. Gladstein: I will ask Mr. Cumlat to take the stand.

SIMON CUMLAT

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows: [267]

The Clerk: Just sit down, please.

Mr. Gladstein: Your Honor will find the—First of all, the spelling of this witness' name——

The Court: I have it.

Mr. Gladstein (Continuing): ——is (spelling) Cumlat. Simon (spelling) S-i-m-o-n.

The Court: L-a-t or l-o-t?

Mr. Gladstein: L-a-t, your Honor, and the first name is Simon (spelling) S-i-m-o-n.

The Court: Yes.

Mr. Gladstein: And the pages in the stipulation that deal with him are to be found commencing with 380 to and including 394.

(Testimony of Simon Cumlat.)

Direct Examination

By Mr. Gladstein:

Q. You are the Simon Cumlat who is one of the defendants and a cross-complainant in this case, aren't you? You are the same person who is named in this case as one of the defendants, are you not?

A. Yes.

Q. All right. Now, last week—First of all, let me ask you, Where do you live?

The Court: Did you say he was a cross-complainant?

Mr. Gladstein: Yes.

Q. (By Mr. Gladstein): Where do you [268] live? A. Waialua.

Q. Waialua. And do you live in the village, village plantation? A. Yes.

Q. One of the camps?

A. One of the camps.

Q. Which camp? A. Mill Camp 4.

Q. Mill Camp 4? A. Yes.

Q. How long have you lived there?

A. Well, I think it is 20 years now at Waialua.

Q. Twenty years. Is that one of the Company's houses? A. Yes.

Q. What is your work at the Waialua Company? What is that called?

A. That is machine operator.

Q. What machine do you operate?

A. The machine that grinds sugar.

(Testimony of Simon Cumlat.)

Q. The machine that grinds sugar. What is it called? Is it called a centrifugal machine?

A. Yes, a centrifugal machine.

Q. Is it a high grade or low grade machine?

A. High grade.

Q. High grade. So that you are an operator of a high [269] grade centrifugal machine; is that right? A. Yes.

Q. And your job is known as high grade centrifugal operator? A. Yes.

Q. How long have you been doing that work?

A. Well, since the time 1940.

Q. Since about 1940? A. Yes.

Q. Now, the other day we went over these pages, or pages that are duplicates of these pages, that show what your duties were, the kind of work that you did, and how many hours you worked; do you remember that, last week when I was out there, you recall that, don't you? A. Yes.

Q. Now, you remember my reading to you and explaining what it says here as to the kind of work you did back in 1946 and 1947; do you remember that? A. Yes.

Q. Does that correctly state—Does that state your job and the things you did correctly and truthfully? A. Yes.

Q. Yes. All right. Now, Cumlat, you can't remember how many hours you worked on a day back in 1946 now, can you? A. No, cannot. [270]

(Testimony of Simon Cumlat.)

Q. But did you keep any records? Did you keep any personal records of how many hours you worked? A. No.

Q. Did not. We went over the pages here that show how many hours a day and how many hours in each week you worked; do you remember that?

A. Yes.

Q. Did those figures and those statements seem to you to be OK? A. Yes.

Q. They seemed to be accurate and true; is that right? A. Yes.

Q. And you would accept them as correctly stating how many hours you worked and how much you received in pay; is that right? A. Yes.

Q. And was your rate of pay 88 cents an hour at the beginning of that time? A. Yes.

Q. And do you remember what it was later on in 1947 after you got a raise? A. Yes.

Q. How much was it?

A. I forget.

Q. From 88 cents it went up to 95, didn't [271] it? A. Ninety-five, yes.

Q. All right. And that is correctly shown here, isn't it? A. Yes.

Q. There were times when you worked 48 hours a week, sometimes 50 hours a week, and so on; isn't that right? A. Yes.

Q. Did you get overtime pay after 48 hours?

A. Yes.

Q. After 48. What about after 40 hours? Did you get overtime pay after 40 hours?

(Testimony of Simon Cumlat.)

A. Oh, yes—No, I mean 48 hours straight time.

Q. Forty-eight hours straight?

A. During the off season.

Q. Now, first of all, the first 48 hours are straight time during the grinding season; is that right? A. Forty-eight.

Q. Forty-eight; is that right? A. Yes.

Q. During the grinding season?

A. Yes, during the grinding season.

Q. When it was off season when did you get overtime? After 40 or 48? A. After 40.

Q. Did you ever do any repair work?

A. Yes. [272]

Q. What kind of repair work did you do?

A. Helped mechanic.

Q. Helping the mechanic? A. Yes.

Q. Where did you do that work? In the machine shop? Or in the mill? A. In the mill.

Q. In the mill. All the time?

A. Off season.

Q. You assisted him when he came in from the machine shop; is that what you mean?

A. No, I mean sometimes we fix all those pumps inside the mill.

The Court: Pans, didn't you say, or pumps?

The Witness: Pumps and sometimes change the pipe.

Q. (By Mr. Gladstein): Change the pipes?

A. Water pipes.

Q. Water pipes. Yes. What else.

(Testimony of Simon Cumlat.)

A. And some of those machines inside.

Q. How many machines did you operate——

Mr. Gladstein: Withdraw that.

Q. (By Mr. Gladstein): How many machines do you operate, are you in charge of right now?

A. Last year I been—No, this year I been operating five machines. [273]

Q. Five high grade centrifugal machines?

A. Yes.

Q. Back in 1946 and 1947 how many did you operate? The same number?

A. No, three machines.

Q. Three of them? A. Yes.

Q. And now you operate five? A. Five.

Q. Now, during the grinding season is all your work inside the mill building? A. Yes.

Q. And during the off season do you do repair work in the mill? A. Yes.

Q. Do you go outside the mill to do repair work during the off season? A. No.

Q. No.

Mr. Gladstein: I believe that is all. Any questions?

Mr. Poole: No questions.

Mr. Gladstein: Any questions, your Honor?

The Court: No.

Mr. Gladstein: Thank you. That is all. [274]

(Witness excused.)

Mr. Gladstein: I will call Masaru Ezawa.

MASARU EZAWA

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Mr. Gladstein: Your Honor, this witness' name is——

The Court: I have it.

Mr. Gladstein (Continuing): ——Masaru (spelling) M-a-s-a-r-u.

The Court: Yes, we have it.

Mr. Gladstein: Oh, you have it already. And your Honor will find the pages of the stipulation dealing with him at 540 to 554, inclusive, of the stipulation.

Direct Examination

By Mr. Gladstein:

Q. Masaru Ezawa—Have I pronounced it right?

A. That's right.

Q. You are the Masaru Ezawa who is one of the defendants and who is a cross-complainant in this case; is that right? A. Yes.

Q. Where do you live? A. Waialua.

Q. Do you live right in the Plantation village?

A. Plantation village.

Q. How long have you lived there? [275]

A. All my life, 36 years.

Q. Thirty-six years. Has all that time been in one of the Company homes?

A. Company homes.

Q. Did your father work for Waialua?

A. Yes, sir.

(Testimony of Masaru Ezawa.)

Q. And does he still work for Waialua?

A. He is on pension.

Q. He is on pension. When did you first start working for Waialua?

A. Since 1928. Twenty-two years ago.

Q. Since 1928; twenty-two years ago. Now, your job at the present time for the Company, what is that? A. Tractor mechanic.

Q. You are a tractor mechanic. And is that the work of a mechanic in the tractor repair shop?

A. Tractor repair shop.

Q. How long have you had that job?

A. Ten years now.

Q. Ten years now. So, in other words, you were doing that work in 1946 and 1947? A. Yes.

Q. Mr. Ezawa, I want to show you pages 540 to 554, inclusive, of this stipulation. You have seen pages like that before, have you not? [276]

A. Yes, sir.

Q. That was last week when you and I went over a duplicate set of this stipulation; isn't that right?

A. Yes, sir.

Q. And in examining this, you noticed, did you, that there was at the end of it a description of the duties and work that you performed during the years 1946 and 1947? A. Yes.

Q. Are you satisfied that those duties and your work during that time for the Company are correctly stated on those pages? A. Yes.

Q. You think so? A. Yes.

(Testimony of Masaru Ezawa.)

Q. And during, and in the earlier portion of the stipulation, beginning at page 540, from time to time on those pages there are statements concerning the repair work that you did on various types of machines and how much time, what hours of work you spent on them; are you satisfied that those are correct? A. Yes.

Q. Did you keep any records of the hours of work that you put in for the Company in those years? A. No.

Q. And you didn't keep any records of the hours you [277] put in on any particular machine, did you? A. No, sir.

Q. But according to your best recollection, would you say that the statements contained in this stipulation are true and correct, substantially true and correct? A. Yes.

Q. You think they are? A. Yes.

Q. Is that right? A. Yes.

Q. Do they coincide with your best judgment and your best remembrance?

A. I think it is all correct.

Q. You think it is all correct. That goes for the hours of work each day, each week, and the rate of pay you received, and the wages you received, and the number of hours you spent doing work as specified here, and the kind of machines you did it on; is that right? A. Yes, sir.

Q. Now, during that time there were many weeks when you worked more than 40 hours, some-

(Testimony of Masaru Ezawa.)

times 55 hours in a week, and so on. During that period were you receiving overtime?

A. Yes, sir.

Q. When did you get overtime?

A. After 48 hours. [278]

Q. After 48 hours. Was that true in the grinding season and the off season, or did they make any distinction between the two?

A. Right through.

Q. Right through. So that it didn't make any difference whether it was grinding season or off season, you got overtime money after 48 hours; is that right? A. Yes.

Q. And the hours between 40 and 48 you got straight time? A. Straight time.

Q. Your repair work, it was on tractors and various kinds of machines, wasn't it?

A. Yes, sir.

Q. What kind? Would you tell us?

A. Tractors, trench diggers——

Q. What is that? A. Trench diggers.

Q. Trench diggers, yes. What else? Diesel engines? A. On the caterpillars.

Q. On the caterpillars, and various types of machinery that are diesel operated? A. Yes, sir.

Q. Any that are gasoline operated?

A. Small ones are gasoline operated. [279]

Q. Small ones, and you worked on those, too; is that right? A. Yes.

(Testimony of Masaru Ezawa.)

Q. How about road graders; did your work include repair of road graders? A. Yes, sir.

Q. Locomotives, did you work on locomotives?

A. We have one with diesel engine on. We overhaul the engine.

Q. There was a locomotive with a diesel engine that you did repair work to; is that right?

A. Yes.

Q. And whenever you did that, if you did any of that work in 1946 and 1947, why a record was made of it on a time sheet; is that right?

A. That's right.

Q. And it would be shown in these pages I have just called your attention to, if you did it in that period; is that so? A. Yes, sir.

Q. Do you work in a particular shop? Did you work in a particular shop there?

A. No, only the tractor shop.

Q. That is what I mean. Your main headquarters was that tractor shop; is that right? [280]

A. That's right.

Q. Did you ever do work outside the tractor shop?

A. Minor repairs. We repair tractors out in the field.

Q. In other words, if there is a break-down of a tractor out in the field where you can repair it out there without having it brought into the shop, you have gone out in the field and done the repair work; is that right? A. Yes, sir.

(Testimony of Masaru Ezawa.)

Q. Did you ever in your work have occasion or the necessity to go to the machine shop for any purpose? A. No, sir.

Q. Have you ever done any outside work for somebody outside the Waialua Company?

A. No, sir.

Q. You have not? A. No.

Mr. Gladstein: All right.

Mr. Poole: No questions.

Mr. Gladstein: Thank you. That is all.

(Witness excused.)

Mr. Gladstein: I will call Mr. Hirosaku Takata.

HIROSAKU TAKATA

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Mr. Gladstein: Your Honor, this witness' name is [281] Takata (spelling) T-a-k-a-t-a, and his first name is Hirosaku (spelling) Hirosaku.

Direct Examination

By Mr. Gladstein:

Q. Did I pronounce it correctly?

A. Yes.

Q. Mr. Takata, you are one of the defendants in this case and a cross-complainant against the Company, are you not? A. Yes.

Q. Where do you live? A. Waialua.

Q. In the Plantation village? A. Yes.

(Testimony of Hirosaku Takata.)

Q. One of the Company houses? A. Yes.

Q. How many years have you lived there?

A. About 39 years.

Q. Thirty-nine years? A. Yes.

Q. How long have you worked for the Company?

A. Oh, about 20 years.

Q. And before you went to work for the Company did your father work for the Company?

A. Yes.

Q. And that is why you were living in a Plantation house [282] before you went to work for it; is that right? A. Yes.

Q. Does your father still work for them?

A. No, he died.

Q. He died. What is your job with the Company? A. I am blacksmith journeyman.

Q. Blacksmith journeyman. Where do you work? Where in the Company's grounds do you work? A. In the shop.

Q. Blacksmith shop? A. Blacksmith shop.

Q. So that, in other words, you are an employee of the blacksmith shop? A. Yes.

Q. And you are a journeyman blacksmith?

A. Yes.

Q. I will show you pages of this stipulation that begin with page 506 and end with page 523, inclusive. Do you see that with your name above it and a description? A. Yes.

Q. Now, do you remember going over these pages, or pages that were duplicates of these, last week? Do you recall we went through this?

(Testimony of Hirosaku Takata.)

A. Yes.

Q. Yes. And there is, in these pages, a description [283] of the work and the jobs and the duties that you performed for Waialua in 1946 and 1947, isn't there? A. Yes.

Q. Now, to the best of your recollection and judgment, do those pages correctly set forth the work that you did for the Company? A. Yes.

Q. They do? A. Yes.

Q. And to the best of your recollection and judgment, do those pages correctly state the number of hours a day and the number of hours in each week covered by that stipulation? A. Yes.

Q. That you actually worked for them; correct?

A. Yes.

Q. You didn't keep records of your own, did you? A. No, I didn't.

Q. And it is impossible, isn't it, for you to remember exactly how many hours in any particular week you worked; isn't that right? A. Yes.

Q. But in going over these with me, did you find that these pages and what they contain seemed to be right, they appear to be correct?

A. Yes. [284]

Q. Is that right? A. Yes.

Q. And they are in accordance with your best remembrance, are they? A. Yes.

Q. And they set forth the rate of pay correctly—Do you remember what your rate of pay was in the early part of that time? $1.27; was that right, $1.27 an hour?

(Testimony of Hirosaku Takata.)

A. First in 1946 after the strike I think it was $1.35.

Q. Well, at first it was $1.27? A. Yes.

Q. Wasn't it? A. Yes.

Q. Then it was changed during that time, in 1947 to, you said, $1.35? A. Yes.

Q. That is what it shows on page 518; that is correct, isn't it? A. Yes.

Q. And the amount of wages you received, those are shown week by week; that is correct, isn't it?

A. Yes.

Q. Whenever you were paid every month, you got a pay check, didn't you? A. Yes. [285]

Q. And a slip that showed how many hours you worked? A. Yes.

Q. And what your rate of pay was, and your deductions, and so on? A. Yes.

Q. Did you look at those slips every month to see if you were getting the right amount of money?

A. Yes, I have, and was right.

Q. And did you find those amounts were correctly figured out according to the rate of pay?

A. Yes.

Q. And as far as overtime was concerned, it appears here that there were many times you worked 48 hours, 52 hours, and so on, in a particular week. When did you start getting overtime, after 40 hours or after 48?

A. After 48 hours in the grinding season.

Q. After 48 hours in the grinding season; and how about the off season? A. After 40 hours.

(Testimony of Hirosaku Takata.)

Q. After 40 hours in the off season. So, in other words, when the mill was shut down and not grinding cane, after 40 hours a week you got time and a half overtime; is that right? A. Yes.

Q. And when the mill was operating in the grinding [286] season, you had to work 49 hours before you got overtime; is that right?

A. Yes.

Q. And the first 48 you received just straight time? A. Yes.

Q. Now, as a blacksmith in that period, you did any kind of job that was needed by the Company, that was a blacksmith's work, I suppose that is right? A. Yes.

Q. Were there any large repairs in the mill that you had to do?

A. Yes, sometimes we do have large repair jobs in the crushing plant.

Q. Any other portion of the mill?

A. Sometimes from the boiling house.

Q. Sometimes from the boiling house?

A. From the field job, too.

Q. What do you mean by "field job"?

A. Plows and like that.

Q. Plows and equipment of that kind. You didn't do any maintenance work in the mill regularly, did you?

A. No. During the off season most of the time.

Q. In the off season you went into the mill to do maintenance work, you say?

(Testimony of Hirosaku Takata.)

A. No, we don't go in the mill, but we have the job [287] in our shop.

Q. I see. Did your blacksmith work involve you in doing railroad jobs? A. Sometimes.

Q. Sometimes you did. And whenever you did that it would be shown on a time sheet and on a record; isn't that right? A. Yes.

Q. And that would be shown in this stipulation whenever you did it, correct? A. Yes.

Q. How about cane car links; did you do things like that?

A. Yes, we have a lot of cane car jobs to do.

Q. Did you ever do work for any independent contractors other than Waialua?

A. No, we don't have.

Q. Just for Waialua? A. Yes.

Q. In your work during this period was all your work done in the blacksmith shop, or did you sometimes have to go to other shops?

A. Oh, sometimes we go to the welding shop, you know.

Q. Welding shop?

A. And to roll our pipe, steel pipe for the siphon. [288]

Q. Anything else?

A. I think that is about all.

Q. That is about the only shop other than the blacksmith shop that you had occasion to do work in; is that right? A. Yes.

Mr. Gladstein: That is all the questions I have.

(Testimony of Hirosaku Takata.)

The Court: Does Waialua have cane field contractors?

Mr. Poole: I don't think so. I will inquire. Are you referring to a contractor employee?

The Court: Cane planting contractors.

Mr. Poole: Cane planting contractors?

The Court: Yes.

Mr. Gladstein: Adherent planters, your Honor?

The Court: Well, some places they are adherent planters.

Mr. Poole: Waialua has no such relationships.

The Court: Contract work on the plantation, contracting various works. It used to be much in cane cutting and road building.

Mr. Poole: They didn't contract any work out. They had an incentive system there under which certain premiums were paid.

The Court: Yes.

Mr. Poole: That that isn't what your Honor is inquiring. [289]

The Court: No.

Q. (By Mr. Gladstein): Mr. Takata, did there come a time when you did work for contractors on some contract, on some contract arrangement?

A. I think we have during the war times, I think.

Q. During the war time? A. Army jobs.

Q. Did you do work for independent contractors? A. No.

Q. During the war?

(Testimony of Hirosaku Takata.)

Mr. Poole: I object to that. It is not involved in the suit. It is the same question you put before.

The Court: It was outside of this period.

Q. (By Mr. Gladstein): Did you do it in 1946 or 1947? A. It was during the war times.

Q. Just during the war times. All right.

Mr. Gladstein: Of course, the war has never been officially declared over, but I think we all understand he means sometime in 1945. Before the last one was declared over, the next one had already commenced.

I have no further questions.

Cross-Examination

By Mr. Poole:

Q. Mr. Takata, I think you said you had done some work [290] in——

Mr. Poole: Withdraw that question.

Q. (By Mr. Poole): I will repeat the question. I think that you testified that you had done some work in the welding shop?

A. Just part of the welding shop. They had a machine to roll the pipe, you know.

Q. To roll pipe?

A. Yes, there is a machine.

Q. There is a machine there to roll pipe?

A. That is a part of the welding shop.

Q. What type of pipe do you roll?

A. Thirty-inch pipe and 54-inch pipe.

Q. What were the pipes used for?

A. For the siphon for the water.

(Testimony of Hirosaku Takata.)

Q. Used in connection with the irrigation of the fields? A. Yes.

Q. Well, now, Mr. Takata, do you know as a fact, during this period of time, from November 20, 1946, to September 14, 1947, whether or not you did this type of work? You don't remember what you did in the particular work weeks of the period I have just mentioned? A. I don't remember.

Q. And it is true that the type of work you say you did [291] in the welding shop may have been done in a different period of time? A. Yes.

Mr. Poole: That is all.

Mr. Gladstein: That is all. Thank you very much, Mr. Takata.

(Witness excused.) [292]

* * *

September 1, 1950

The Clerk: Civil No. 787, Waialua Agricultural Company, Plaintiff, versus Ciraco Maneja, and others, Defendants.

Mr. Gladstein: Defendants for Cross-Complainants are ready. I will call Mr. Yamada.

YOSHIJI YAMADA

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

Mr. Gladstein: Your Honor, you will find that this name is Y-a-m-a-d-a, and the first name is Y-o-s-h-i-j-i. And am I pronouncing it correctly?

(Testimony of Yoshiji Yamada.)

The Witness: J-i.

Mr. Gladstein: G-i? We have J-i here in the case, but that is a matter of my spelling.

By Mr. Gladstein:

Q. And you are the same Yoshigi Yamada, a carpenter shop employee of Waialua who is one of the Defendants and Cross-Complainants in this case, aren't you? Is that right? A. Yes.

Mr. Gladstein: And your Honor will find in the stipulation that the pages with this employee's work activities during the period with which we are concerned commences at page 587 and concludes at 593, inclusive. [305]

Q. Mr. Yamada, where do you live at the present time? A. Waialua.

Q. And is that in the plantation village itself?

A. That's right.

Q. Do you live in one of the Company-owned houses? A. That's right.

Q. How many years have you lived in that house or similar houses owned by the company?

A. Ever since I was born.

Q. Ever since you were born? A. Yes.

Q. And since you are not a lady I think I am not reluctant to ask you what your age is? What is it? A. Forty years.

Q. How long have you worked for the company?

A. 24 years.

Q. Prior to the time that you went to work for

(Testimony of Yoshiji Yamada.)

the company I take it that your father or some other member of your immediate family who was the head of the family with which you were living was then an employee of the company?

A. That's right.

Q. Now, in this stipulation you are listed as an employee of the carpenter shop of that company, is that a correct statement?

A. Employee. [306]

Q. Of the carpenter shop?

A. Of the carpenter shop.

Q. In 1946 and 1947, I should say.

A. That's right.

Q. Is your job different at the present time?

A. At present I am a supervisor on the housing department, carpenter.

Q. But in 1946 and in 1947 you were not then a supervisor of the housing, were you? A. No.

Q. At that time, is it correct, that you were an employee of the carpenter shop of the company?

A. That's right.

Q. And where was that carpenter shop located?

A. It is located in the mill yard.

Q. Is it inside or outside? Was it then inside or outside of the mill building?

A. I beg your pardon?

Q. Was the carpenter shop inside or outside of the mill building itself?

A. Well, the carpenter shop building is located in the mill yard. The mill yard is quite a big yard and it is located within the yard.

(Testimony of Yoshiji Yamada.)

Q. And there are a number of buildings in that yard, are there not? [307] A. That's right.

Q. And one of them is the mill building where the sugar is processed? A. That's right.

Q. And another is the carpenter shop?

A. That's right.

Q. And that is located physically outside of the mill building itself, is that right?

A. That's right.

Q. And that was true in 1946 and 1947, was it? Right? A. Right.

Q. Now, I am going to show you, Mr. Yamada, the pages that I just referred his Honor Judge Metzger to in this stipulation. They begin at page 587 and they conclude at page 593, inclusive. Last week did you go over a duplicate set of these pages and examine them? A. I did.

Q. And did you read them and understand them? A. Thoroughly.

Q. Now, on the last page of those pages and at various other portions of those pages, 587 to 593, inclusive, there are statements that purport to set forth or describe activities or work that you did in this period from November 18, 1946, to and including September—I shouldn't say September—to March 30, 1947. Do those pages and those statements in those pages [308] correctly set forth the duties and activities that you performed during that period for the company? A. That's right.

Q. They do? A. That's right.

(Testimony of Yoshiji Yamada.)

Q. So that they are true and accurate and complete statements of the kinds of work that you did for the company during those work weeks, is that right? A. Yes.

Q. Now, you also noticed that a week by week and day by day, that week by week and day by day there is a breakdown shown here for the number of hours that you worked for the company. I take it that you kept no personal records of how long you worked for the company in those years each day, did you? A. No.

Q. And I also take it that you don't have an exact and precise recollection at this moment of just how many hours you worked on a particular day four or five years ago, do you?

A. No record.

Q. But in examining these pages did you reach the satisfactory conclusion that they correctly set forth in accordance with your best recollection the number of hours that you worked each day and each work week as shown on these pages?

A. I will say because as far as this record is concerned I am quite sure they got it from the main office. It is really [309] up to them as far as I know.

Q. And correct? A. Correct.

Q. And when you were receiving your pay checks during those periods I suppose you were receiving monthly pay checks, were you?

A. That's right.

(Testimony of Yoshiji Yamada.)

Q. And when you received those the company provided you with each pay check, they provided you with a breakdown of the number of hours you worked during that period and the rate of pay and the computation, and so on?

A. That's right.

Q. And did you examine those each time you got them? A. That's right.

Q. And did you ever have occasion to find an error and reported it to the company? A. No.

Q. So that you were satisfied month by month as the thing was fresh in your mind that you were being paid correctly as far as the number of hours and the rate of pay? A. That's right.

Q. Now, with regard to overtime, there are weeks shown here when you worked more than 40 hours in a particular week. For example, the work week of December 2 to 8, inclusive, 1946, you worked 48 hours. And there are others of a similar [310] kind. In those work weeks when you worked 8 hours a day and 48 hours a week, did you receive overtime at time and one-half or at any other overtime rate?

A. We did receive time and one-half.

Q. When? A. I can't remember.

Q. Was it in the off season?

A. That's right, the off season.

Q. What about the grinding season?

A. Grinding season, no.

(Testimony of Yoshiji Yamada.)

Q. So that when the grinding season was in progress and you worked 48 hours in a week, 8 hours a day, is it correct that you received straight time only, your regular rate or straight time rate of pay for all of the 48 hours of that week, is that right? A. That's right.

Q. I want you to check your memory again now because your status has changed since you have left the carpenter shop as such and became a supervisor. It appears here—take the week of January 20 to 26, 1946, that is, a week that was within the grinding season that year, as the facts in this show. Now, it shows that you worked 48 hours that week and you got just the straight time rate, all the hours at straight time, even in the off season. I want you to reconsider and tell us whether or not you were mistaken when you said you [311] were receiving overtime in the off season because it appears here that you were getting straight time for the first 48 hours whether it was off season or grinding season. Do you want to correct your testimony on that? A. I think I will.

Q. So that, in other words, the fact is that you never got overtime for the first 48 hours where you worked 8 hours a day, is that right?

A. That was during- —

Q. During 1946 and 1947, is that right?

A. Yes.

Mr. Gladstein: All right. I think we are all in agreement, your Honor. Isn't that right Mr. Jenks, and Mr. Poole, that the facts show that this em-

(Testimony of Yoshiji Yamada.)

ployee did not receive overtime for the first 48 hours a day during either grinding or off season?

Mr. Poole: I am examining the stipulation and we can't find but one instance during that period of time.

Mr. Gladstein: There was one work week?

Mr. Jenks: January 27 to February 2.

Mr. Gladstein: Yes, that's right, with one exception that statement is correct. And that is the work week of——

The Court: One week in——

Mr. Gladstein: In that period.

The Court: ——in that period he was put on a 40-hour week [312] schedule?

Mr. Gladstein: Yes, one week. And that is the week of January 27 to February 2, 1947, inclusive. Now, that week he worked 48 hours and that week he received time and one-half for the hours after 40. And he worked 8 hours a day for 6 days that week, and there is an explanatory note in reference to that work week which shows that among other things he performed 32 hours of work in making repairs at the plantation mill to machinery and equipment that was used in the cane processing operations.

The Court: Well, he was out of the shop then?

Mr. Gladstein: Yes, he was out of the shop at that time.

The Court: Working in the mill?

Mr. Gladstein: That's right, your Honor. And that was a part of the off season.

(Testimony of Yoshiji Yamada.)

Mr. Poole: Right.

Mr. Gladstein: Are we agreed on that, gentlemen?

Mr. Poole: Yes.

Mr. Gladstein: I have no further questions of Mr. Yamada.

Cross-Examination

By Mr. Poole:

Q. Mr. Yamada, do you recall when you became a supervisor at Waialua Agricultural Company?

A. It was in 1947.

Q. Do you remember the particular day? [313]

A. The month of March. It was March.

Q. 31st?

A. I am not quite sure about the date but I exactly know the month. It was March, on March.

Mr. Poole: Well, for the information of the Court the records of the company show, and the stipulation states, that this witness became a supervisor on March 31, 1947. And the parties have stipulated that thereafter he was not subject to the Fair Labor Standards Act; but from the beginning of the period of the suit, namely, November 20, 1946, up to the time he became a supervisor he was.

Mr. Gladstein: That's correct.

Mr. Poole: So the full period of time involved in this suit is not applicable to this witness.

Mr. Gladstein: That's right. The period of time for which we are claiming are those work weeks

(Testimony of Yoshiji Yamada.)

that are embraced within the period November 20, 1946, to and including the 30th of March, of 1947.

Mr. Jenks: 31st is the day——

Mr. Poole: No more questions.

Mr. Gladstein: That's all, Mr. Poole. Any questions, your Honor? All right, Mr. Yamada, you may step down.

(Witness excused.)

Mr. Gladstein: I'd like to call Mr. Tanaka. [314]

TOSHIO TANAKA

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Mr. Gladstein: Your Honor, first of all the spelling of the witness' name is T-a-n-a-k-a, last name; and the first name is T-o-s-h-i-o. And the portion of the stipulation dealing with him commences at page 454 and it runs to 471, inclusive.

Direct Examination

By Mr. Gladstein:

Q. Now, Mr. Tanaka, you are the same Mr. Toshio Tanaka who is one of the Cross Complainants in this case, are you not? A. Yes.

Q. Where do you live, sir?

A. Waialua in a camp.

Q. In one of the camps in the plantation village?

A. Yes.

(Testimony of Toshio Tanaka.)

Q. And how long have you lived there?

A. All my life.

Q. And how long is that? A. 30 years.

Q. When did you first go to work for the company? A. '39.

Q. In 1939? A. Yes.

Q. And during the period before 1939 were you living with your father? [315] A. Yes.

Q. In one of the camp houses?

A. We have a store.

Q. What is that? A. We have a store.

Q. You have a what? A. A store.

Q. Well, were you living in one of the company-owned houses at that time? A. Yes, sir.

Q. And was your father working for or in business, some business connected with the Waialua Company? A. No, sir.

Q. He was not? All right. Now, since you went to work for Waialua in 1939 you have been working for them continuously, have you? A. Yes, sir.

Q. In 1946 and 1947 what part of the company's property were you working in?

A. Machine shop.

Q. You were an employee of the machine shop, is that right? A. Yes.

Q. And what were you, a machinist?

A. Yes, a machinist. [316]

Q. Did you work a particular shift, regular shift, day or night, or did you shift around?

A. Just day shift.

(Testimony of Toshio Tanaka.)

Q. You worked on the day shift? And what were the hours of that day shift?

A. 8 hours from 6:30 to 3.

Q. From 6:30 to 3? 8 hours? And that would mean a half-hour for lunch? A. Yes, sir.

Q. Is that right? Now, when you were in the machine shop, when you were working as a machinist, where was most of your work done, in or outside of the machine shop?

A. In the shop, sir.

Q. Were there times when you had occasion to leave the shop in order to perform your work?

A. Yes, sometimes.

Q. And what kind of jobs did you do when you were called on to leave the machine shop?

A. Well, repairing things in the mill.

Q. Portions of the mill equipment?

A. Yes, sir.

Q. Anything else, any portions of the plantation village homes? A. No, sir.

Q. Now, would you give an indication of what the work, [317] your work, as a machinist embraced, what kind of machine parts and equipment you worked on?

A. Well, as a machinist we do all sorts of jobs such as repairing of the P and H.

Q. P and H machines?

A. Parts of those. Automobiles and locomotives, tractors and mill parts.

Q. Did you make pins and bushings for locomotives? A. Yes.

(Testimony of Toshio Tanaka.)

Q. And bushings and fittings for automobiles?

A. Yes, sir.

Q. And trucks? A. Yes.

Q. Is that right? A. Yes.

The Court: You turn mill rollers out?

The Witness: The machine shop does.

The Court: It does?

The Witness: Yes.

Mr. Gladstein: What was the Court's question?

(The reporter read the Court's question and answer of the witness.)

Q. So a part of your work was to keep in repair and maintenance portions of the mill equipment and building, is that right? [318] A. Yes.

Q. And did you during that period make or repair or maintain tools and machinery of any kind that was used in the mill? Well, you have answered about mill rollers, for example. Were there any other portions of mill equipment that you either repaired or maintained that you can remember?

A. We did repair the centrifugals and things of that sort in the sugar rooms.

Q. Now, Mr. Tanaka, last week you remember we had occasion to review a duplicate set of pages which appear commencing at page 454 and ending with 471, inclusive, in this stipulation? I want you to examine those pages and state if you recognize them as duplicates of the pages that we went over together. Do you recall that? This is showing your work weeks. A. Yes.

(Testimony of Toshio Tanaka.)

Q. And the job description, do you recall that?

A. Yes.

Q. And in reading those pages did you understand them? A. Yes.

Q. And I will ask you whether it is a fact that the portions of these pages that tell what kind of work you did during the period covered by those pages correctly and honestly sets forth the kind of duties and activities and work that you performed in that period? [319] A. Yes.

Q. They do? A. Yes.

Q. I will ask you whether or not to your best recollection the statements contained in those pages regarding the number of hours you worked each day and the number of hours you worked each work week in that period are to your best judgment and remembrance true and correct? A. Yes.

Q. You have no evidence or belief to the contrary, is that right? A. Yes.

Q. And when you used to receive your pay checks once a month, did you examine them?

A. Well, at least I looked at them.

Q. Did you ever have occasion, did you ever find that the number of hours that you had worked was improperly or incorrectly set forth?

A. No, sir.

Q. You did not? What about the rate of pay? Is it correct that you were receiving $1.27 an hour in November, 1946? A. Yes.

Q. And that later on your rate went up to $1.47½? A. Not 47. [320]

(Testimony of Toshio Tanaka.)

Q. Oh, $1.35. Excuse me. A. Yes.

Q. So as I understand it, your testimony is that all the statements and figures and computations contained in the pages that I have enumerated are to your best recollection true and correct?

A. Yes, sir.

Q. Is that right? A. Yes.

Q. Now, there were a number of weeks shown here when you worked more than 40 hours in a week. There were times when you worked 48, times when you worked 56, times when you worked 58 hours in a week, and so on. What is the fact as to whether you received overtime for the hours after 40 and before 49? A. I beg your pardon?

Q. Well, when did you start to get overtime?

A. After 48 hours.

Q. After 48 hours? A. Yes.

Q. And was that true regardless of whether the mill was in operation or shut down?

A. No, during the off seasons we had 40 hours.

Q. 40 hours? A. Yes, sir. [321]

Q. So that in your case when the mill was shut down and it was off season and there was no sugar processing taking place, you received your overtime at the rate of time and one-half, is that right?

A. Yes.

Q. For hours after 40 in each work week?

A. Yes.

Q. And when the mill was operating, you didn't start to get your overtime at time and one-half

(Testimony of Toshio Tanaka.)

in any work week until after you had done 48 straight time hours, is that right? A. Yes.

Q. Now, was there any difference between the work that you did in the off season and in the grinding season or were you doing the same kind of machinist work during both periods?

A. Same kind of machinist.

Mr. Gladstein: You may examine.

Mr. Poole: No questions, your Honor.

Mr. Gladstein: That's all. Thank you.

(Witness excused.)

Mr. Gladstein: I will call Mr. Crisostomo.

ROQUE CRISOSTOMO

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

Mr. Gladstein: This witness' name, your Honor, is C-r-i-s-o-s-t-o-m-o, and the first name is [322] R-o-q-u-e.

By Mr. Gladstein:

Q. Where do you live, Mr. Crisostomo?

A. Waialua.

Q. And do you live in the plantation village of Waialua? A. Yes.

Q. Do you live in one of the company-owned houses, one of the company-owned houses or camps, you live in one of those? A. Yes.

(Testimony of Roque Crisostomo.)

Q. How long have you lived in one of those houses? A. Oh, about 10 years.

Q. You mean in the house that you are in now?

A. Yes.

Q. Well, before that did you live in some other house also owned by the company?

A. That's right.

Q. Well, how long altogether have you lived in one or another of the company houses, how many years? A. Together?

Q. All together? A. 26 years.

Q. 26 years? A. Yes.

Q. And how long have you worked for the company? A. Just the same, 26. [323]

Q. So that the period of time you have lived in one of the company-owned homes and the period of your service for the company are the same, namely, 26 years? A. 26 years.

Q. Now, what is your work at the present time? What is your work called?

A. They call it auto patrol grader.

Q. Auto patrol grader, is that it? A. Yes.

Q. And do you drive or operate one of those grading machines? A. Yes, sir.

Q. So, in other words, you are a grader-driver?

A. Yes, sir.

Q. Did you hold that same job back in 1946 and 1947? A. Yes, '45.

Q. You started in 1945? A. That's right.

Q. Before that time you were doing some different kind of work? A. Yes, tractor operator.

(Testimony of Roque Crisostomo.)

Q. Before 1945 you were a tractor operator, you say? A. Yes.

Q. And then, beginning in 1945 and since that time, you have been the operator or driver of a grader machine? [324] A. Yes.

Q. What is the difference between the two?

A. On this tractor driver, operator, that is plowing the cane fields, they call—cut cane—we use lime sifter.

Q. You make the lines?

The Court: Oh, lines?

The Witness: Yes.

The Court: I thought you said lime sifter.

The Witness: No, lines.

Q. That's what you did when you were working as a tractor driver? A. Yes.

Q. But since you have been working as a grader-driver what kind of work have you done?

A. On this grader job, is for any kind of job; the most I doing this job is level the road.

Q. The most that you do on this job is level the road?

A. And build the bank of the side of the cane field, and sometimes there is some holes I cover.

Q. Holes in the road, you mean? A. Yes.

Q. In other words, you repair and maintain the roads and highways on the plantation, is that right?

A. Yes.

Q. And all over? On the company's [325] property? A. Company property.

(Testimony of Roque Crisostomo.)

Q. All right. In other words——

The Court: You scrape the surface clean?

The Witness: Yes, sir.

The Court: Scrape off the mud?

The Witness: Yes.

The Court: On the side of the road?

The Witness: Yes.

Q. In other words, you do work like that done by the Territorial Government workers who repair and maintain and make these streets out here in front of this courtroom? A. Yes.

Mr. Poole: I object to that. I think it is quite improper.

The Court: I think it is a sort of a special service on plantations. They accumulate in wet weather lots of mud and stuff on the road and they scrape it off to the side of the road. Isn't that about right? Isn't that what you do?

The Witness: Yes.

Q. (By Mr. Gladstein): Now, Mr. Crisostomo, among your duties did you do repairs in the repair shop? A. Sometimes.

Q. Sometimes you did? And whenever that was done that was shown—withdraw that. That grader, would you tell us a little bit about it? How was it operated? [326]

A. This, you driving and you are holding what they call hydraulic lever.

Q. There are hydraulic levers? How many hydraulic levers are there? A. Six.

Q. And you operate those levers and for what

(Testimony of Roque Crisostomo.)

purpose do you operate them? What happens when you do that?

A. Well, the two hand levers, two hydraulic levers down and up, and to this side you spin the blades.

Q. In other words, these levers control blades in front and on both sides of the machine, is that it?

A. That's right.

The Court: Is there more than one blade?

The Witness: One in front they call that bull-dozer, and one in the center; that's when you clean.

Mr. Gladstein: When you clean the road? The one in front, if you make a bank, any corner like that, that's the one you use?

The Court: I think that isn't essential.

Mr. Gladstein: All right.

Q. Now, last week we went over certain pages that were just the same as the ones I am now showing you, beginning at page 221 and ending at 238, inclusive. You remember that, Mr. Crisostomo, going over these pages with me? Don't you recall our going over these pages to see how many hours you [327] worked? You remember that?

A. Oh, to my job? Sometime I have half an hour, one hour overtime.

Q. Well, I haven't asked you about overtime yet. But you remember we went over all this material? You remember that? A. Yes.

Q. Now, did you understand what is on those pages? You understood that? A. Yes.

(Testimony of Roque Crisostomo.)

Q. I will ask you if these pages, when they tell what you did, the kind of work that you did, whether they state correctly, whether they state the facts just what you did in your job during those years? Do they? A. That's the job.

Q. The descriptions here, you mean?

A. Yes.

Q. So, in other words, those statements are correct, are they? A. Yes.

Q. And the hours of work that you put in, the number of hours you put in every day and every week, of course you don't remember that exactly, do you? A. No.

Q. But the way those are set down here in these pages [328] in this stipulation, to your best judgment would you say that they are O.K. and satisfactory and correct? A. Yes, sir.

Q. And to your best judgment that they truly tell the hours that you worked and the rate of pay you received and the money you received?

A. Yes, sir.

Q. All right. Now, there were many times when you worked more than 40 hours in a week; you worked 49 or 50 or even hours more than 50 in a week. Did you get overtime for—when did you start to get overtime, after 40 or 48 hours?

A. 48.

Q. After 48 hours? A. Yes.

Q. And the first 48 hours were straight time, is that right? A. Yes.

(Testimony of Roque Crisostomo.)

Q. And was that the same in the off season, both? A. That's right.

Q. So that all the time in this period you never got overtime until you worked 48 hours in a work week, is that right?

A Yes. Up to 48, and then I had it.

Q. That is, if you were working 8 hours a day, is that right? [329] A. Yes.

Mr. Gladstein: No more questions.

Mr. Poole: No questions.

Mr. Gladstein: That's all. Thank you.

(Witness excused.)

The Court: As I get it, the grinding season or off season made no difference to his employment.

Mr. Gladstein: In his case it made no difference, yes, your Honor. Now, I will call Mr. Faria.

BARNEY FARIA

a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

Mr. Gladstein: Your Honor, this man's name is spelled F-a-r-i-a, and the first name is Barney. Am I right about that?

The Witness: Yes, sir.

Mr. Gladstein: And your Honor will find that the stipulation from pages 472 to page 485, inclusive, deals with the activities of this man.

The Court: 472 to 485?

(Testimony of Barney Faria.)

Mr. Gladstein: Yes, that's correct, your Honor.

By Mr. Gladstein:

Q. Mr. Faria, you are the Mr. Faria who is a defendant and Cross-Complainant in this case, are you not? A. Yes, sir. [330]

Q. Where do you live now?

A. I live at Waialua plantation.

Q. In the village itself?

A. No. I am living in my own home now, since June 24th.

Q. Of this year? A. Yes.

Q. You bought a house in June of this year?

A. Yes. I just bought a house.

Q. And before that where did you live?

A. In the plantation.

Q. One of the plantation-owned houses?

A. Yes, sir.

Q. How many years?

A. Well, that's 44 years.

Q. How long have you worked for the company?

A. 40 years.

Q. Is it more or less than 40 years?

A. 40 years.

Q. In 1946 and 1947 what kind of work were you doing for the company?

A. Machine shop, locomotive repair, mechanic.

Q. You were a mechanic? A. Yes, sir.

Q. Working, performing repairs on locomotives and locomotive parts, is that right? [331]

(Testimony of Barney Faria.)

A. Yes, sir.

Q. Now, was that in the shop that is called machine shop or was it somewhere else?

A. Well, general overhaul we do it in the shop. We lift up the old engine; engine overhaul right in the shop.

Q. Right in the machine shop? A. Yes.

Q. And where else did you perform work?

A. Then on season we generally go to the round house and doing repair there.

Q. And during the grinding season you would do your repair work at the round house?

A. Round house.

Q. Is that right? A. Yes, sir.

Q. Before you became a locomotive repair worker, did you ever work on locomotives or trains?

A. Yes, I worked on locomotives years ago.

Q. And what jobs did you hold?

A. Fireman.

Q. Fireman? A. Brakeman.

Q. Did you ever do any work on the equipment in the mill during this period? Well, I will withdraw that. Last week a set of pages that are just the same as the pages from [332] 472 to 485, inclusive, with your name on top, giving a description of the number of hours you worked in the weeks that are shown there, and the duties of your job, and the work that you did for the company in this period from November 18, 1946, to and including

(Testimony of Barney Faria.)

September 14, 1947, were shown you, and we went over this; do you recall that? A. Yes.

Q. And did you understand fully the contents of these pages? A. Yes, sir.

Q. And did you find them and do you now find them true and correct? A. Yes, sir.

Q. Are you satisfied that the statements contained in here concerning the type of work that you did in that period, what machines you worked on, or locomotives you worked on, or what kind of work you did, and when you did it, are correctly stated to the best of your remembrance?

A. Yes, sir.

Q. Now, you kept no records of the number of hours you worked in any particular day or week, did you? A. No, sir.

Q. And is it possible for you to remember exactly how many hours you worked in any day?

A. No. [333]

Q. But in going over these pages, are you satisfied that in accordance with your best recollection these pages appear to you to correctly set forth the number of hours you worked each day and each week, as shown here? A. Yes, sir.

Q. And the rate of pay that you received and the amount of wages? A. Yes, sir.

Q. Now, I notice that there were weeks here, Mr. Faria, when you worked more than 40 hours. There were weeks when you worked 48 hours, weeks when you worked 56 hours, weeks when you worked

(Testimony of Barney Faria.)

58 hours, and so forth and so on. Well, there was even a week when you worked more than 60 hours. What overtime did you receive during that period?

A. Over 48.

Q. Over 48? A. Yes.

Q. In other words, if your work was 8 hours a day and 6 days in a particular week, that is, 48 hours, for those first 48 hours in that particular week, work week, you just got straight time all through, is that right? A. Yes, sir.

Q. And the first time that you got overtime in that kind of a week would be after you worked 48 hours? A. Yes, sir. [334]

Q. And was that true both in grinding season and in the off season?

A. That is, well, on season. Off season over that 40 hours a week, paid overtime.

Q. So that what you have just testified to about receiving overtime only after you worked 48 hours applies to the grinding season, is that right?

A. Yes.

Q. Is that right? A. Yes, sir.

Q. But when the mill was shut down and it was off season, then the company paid you overtime after 40 hours in a week, is that right?

A. Yes, sir.

Q. Now, were you doing the same kind of work for the company in the off season as you were doing in the grinding season? A. Yes, sir.

Q. There were no differences between your types

(Testimony of Barney Faria.)

of work and your activities in those two periods, is that right? A. Yes, sir.

Q. Is that right? A. Yes.

Q. Did you ever in that period work on any O. R. and L. locomotives that got broken down on the company's land? [335] A. No, sir.

Q. You did not? Now, in your work in that shop, did you ever have occasion to repair or maintain equipment for the mill? A. Very seldom.

Q. And if you did any during the period shown here, why, it would be shown right in these pages, is that right? A. Yes, sir.

Q. Records were kept, am I right; am I right that records were kept of the time that you put in on various kinds of work and the kinds of work that you did? A. Yes.

Q. You saw that yourself during all those years, didn't you, is that right? A. Yes.

Q. Now, did you repair or make or maintain tools or machinery of any kind? A. No, sir.

Mr. Gladstein: All right. I think those are all the questions I have.

Mr. Poole: No questions.

Mr. Gladstein: Thank you. That's all.

(Witness excused.)

DAMASO CLAUNAN

a witness on behalf of the Defendants, being duly sworn, testified as follows: [336]

Mr. Gladstein: This witness, your Honor, is named Damaso, D-a-m-a-s-o, that is the first name; C-l-a-u-n-a-n.

The Court: The first name?

Mr. Gladstein: The first name is D-a-m-a-s-o; second name is C-l-a-u-n-a-n. Is that right?

The Witness: Yes, sir.

Mr. Gladstein: Am I pronouncing it correctly, Damaso Claunan?

The Witness: Yes, sir.

Direct Examination

By Mr. Gladstein:

Q. Mr. Claunan, you are the same Damaso Claunan who is one of the defendants and cross-complainants in this case, isn't that right?

A. Yes, sir.

Q. You live at Waialua? A. Yes, sir.

Q. You live in the village? A. Yes.

Q. In one of the camps? A. Yes.

Q. In one of the company-owned houses?

A. Yes.

Q. How many years have you lived there?

A. Ever since 1930. [337]

Q. Ever since 1930? In other words, about 20 years? A. About 20 years.

Q. When did you first go to work for the company? A. In 1930.

(Testimony of Damaso Claunan.)

Q. So, in other words, the time that you started to work for the company and the time that you started to live in one of the company-owned houses was the same, is that right? A. Yes, sir.

Q. Now, in what part of the operations of the company do you work? A. Auto mechanic.

Q. You are an auto mechanic?

A. Yes, sir.

Q. And what part, what building or shop or part of the operations do you do your work in?

A. In the garage shop department.

Q. The garage shop? A. Department.

Q. The garage shop department? How long have you done that work for the company?

A. For about, since 1936. Since 1936.

Q. Before that you were doing something else, were you?

A. Oh, yes, I was outside worker.

Q. You were an outside worker before that?

A. Yes, sir. [338]

Q. But, in other words, for the last 14 years you have been working as a garage shop or garage department employee? A. Yes, sir.

Q. And so in 1946 and 1947, the period of time that we are concerned with in this case, that was your work, in the garage shop? A. Yes, sir.

Q. Now, as a garage shop employee, what are you, are you a mechanic? A. Yes, sir.

Q. And your work is on various types of engines, is that right? A. Yes, sir.

(Testimony of Damaso Claunan.)

Q. What kind of engines?

A. Automobile, trucks, Fordson, Fordson in the mill, trash carrier.

Q. Will you repeat that slowly?

A. Automobiles.

Q. Trucks? A. Trucks.

Q. Did you say Fordson?

A. Fordson. I used to push the trash.

Q. What is a Fordson?

A. Heavy equipment.

Q. Like a tractor? [339]

A. Push the trash closer to the trash carrier.

Q. To push it closer to the trash carrier, is that right? A. That's right.

Q. What other kind of machines?

A. Gasoline engine, locomotive.

Q. Gasoline engines and locomotives?

A. Yes, sir.

Q. Now, as a mechanic, where did you do your work, in the garage or did you sometimes go out of the garage?

A. Inside of the garage. Sometimes we go out for trouble calls.

Q. In other words, as a kind of a trouble-shooter you'd sometimes go out, if you could do the repair work outside, is that right? A. Yes.

Q. And in what part of the company's operations did you go, to the mill, the field?

A. Any place, because we used to repair some tow motors inside the warehouse, sugar warehouse.

(Testimony of Damaso Claunan.)

Q. No, what kind of a motor?

A. Tow motors.

Q. Tool motors? A. No, tow.

The Court: Repaired two motors? [340]

Q. Tow motors? A. Tow.

Q. In the sugar warehouse? A. Yes.

Q. So your repairing work took you into the sugar warehouse to make those repairs and also into the mill, is that right? A. Yes.

Q. And into the field? A. Yes.

Q. Into the plantation village? A. Yes.

Q. Wherever you were called to do the kind of mechanical repairs that you were able to do, is that right? A. Yes.

Q. But most of the time, most of the time, is it true that you did your work during this time that we are concerned with in this case, did your work in the garage? A. In the garage.

Q. That was your headquarters? That was your regular place of work? A. Yes, sir.

Q. Now, that garage, that garage building, is separate and apart from the mill building, isn't it? It is away from the mill building? [341]

A. It is about a hundred yards away.

Q. Did you ever do work on privately-owned cars?

A. Sometimes when authorized by supervisor.

Q. Sometimes when authorized by supervisors? Would that be, for example, the private cars of supervisors or the plantation manager or somebody else? Whenever they authorized it?

(Testimony of Damaso Claunan.)

A. Yes. Some visitors might stall their cars.

Q. Visitors? Now, whenever that was done, a record was made and a record was kept of that, is that right, as to the work you did? A. Yes.

The Court: These tow motors, were they battery motors?

The Witness: Yes, sir, battery motors.

The Court: Run by battery?

The Witness: Yes, sir.

Q. Now, you mentioned repair work you did on locomotives. What part of the locomotives did you repair and do mechanical work on?

A. Some generators, sometimes won't charge.

Q. Sometimes when the generator wouldn't charge? What else? Were there any locomotives with gasoline engines? A. Yes, sir.

Q. And did you do repair work on the gasoline engines in those locomotives?

A. We used to repair the clutch, [342] transmission.

Q. What else?

A. Sometimes it wouldn't start. We have to start them.

Q. Sometimes when they wouldn't start you have to start them? A. That's right.

Q. Did you ever work on the compressor engines? A. Yes.

Q. Now, what are those compressors? Are those portable or are they stationary?

A. Portable.

Q. They are carried in the field, are they?

(Testimony of Damaso Claunan.)

A. Yes.

Q. What are they used for?

A. For drilling some stones, like that.

Q. Drilling into stone?

A. Yes, sir, digging holes.

Q. And they use it in connection with the road work and any kind of work for which that kind of equipment is used, is that right? A. Yes, sir.

Q. And your work included doing repairs on that kind of equipment? A. Yes.

Q. Now, Mr. Claunan, in the garage shop did you work on any tools? Did you maintain and repair tools that you used [343] from time to time? Well, you had tools there, didn't you?

A. We get our own tools.

Q. I know you did. But did you keep them up and maintain them and repair them?

A. Yes.

Q. You used to do that, too? A. Yes.

Q. And did you ever keep up and repair and maintain any machinery that was used in the mill? Did you do that?

A. I don't think. I couldn't remember that.

Q. You can't remember?

The Court: He spoke about the little towing trucks.

Mr. Gladstein: Yes, he mentioned that. Outside of what he mentioned, he says he can't remember.

Q. Now, Mr. Claunan, last week you recall a set of pages exactly like these pages beginning at page 555 and ending at 570 were brought out to

(Testimony of Damaso Claunan.)

Waialua and you sat down, do you recall, and we went over this whole thing in order to see if it was correct? Do you recall that? A. Yes.

Q. Now, first of all, did you understand these pages? You understood? A. Yes.

Q. Do these pages honestly and truly state the kind of work that you used to do and did do for the company in [344] this period, November 18, 1946, to September 14, 1947? A. Yes.

Q. They do? All right. And what about the hours of work that are shown here that you worked every day and every week, do you remember exactly in your own mind how many hours you worked on a particular day? A. No.

Q. You can't do that, can you? A. No.

Q. And did you keep any record of your own as to how long you worked each week? You didn't keep any records? A. No.

Q. But when you used to get your pay check did you examine it regularly to see if it showed correctly the hours you worked? A. Yes, sir.

Q. And did you ever have occasion in this period to go to the company and complain that they had made a mistake or anything like that?

A. No.

Q. You never did? Now, are you satisfied, Mr. Claunan, according to your best recollection as you looked over these pages, the information that is shown there as to the number of hours you worked every day and every work week seems and appears to you to be true and correct? [345]

(Testimony of Damaso Claunan.)

A. Yes, sir.

Q. You are satisfied that it is true and correct, is that right? A. Yes.

Q. And is it correctly stated, does it correctly state the rate of pay at $1.27 an hour at the start of that period? A. Yes.

Q. And later on you got a raise and it went up to $1.35? A. Yes, sir.

Q. And that is correctly shown as to when that went into effect, is it? A. Yes.

Q. And the amounts of wages you received each week, are those figures correctly shown?

A. Yes.

Q. Now, I see here that there were a number of weeks when you worked more than 40 hours each week. Sometimes you worked 48 and sometimes you worked more than 48; you worked 59 hours a week, 57 hours a week, and various long work weeks. Tell the Court when you worked more than 40 hours a week when did you start to get overtime pay? A. After 48 hours.

Q. After 48 hours? And was that true both in the grinding season and in the off season?

A. Yes, sir. [346]

Q. Same thing? It didn't make any difference one way or the other, is that right?

A. Yes, sir.

Q. Now, were there a couple of times, Mr. Claunan, when the Company sent you to work inside the mill during the off season?

A. Yes, sometimes.

(Testimony of Damaso Claunan.)

Q. And when you worked in the mill in the off season, did they pay you overtime after 40 hours?

A. Yes, sir.

Q. I see. And whenever that was done, why, a record was kept and that is shown on these pages here, isn't that right? Isn t that right?

A. Yes, sir.

Mr. Gladstein: And your Honor will find there are a couple of work weeks, for example——

The Court: I was reading explanatory note No. 2. That seems to tell that story.

Mr. Gladstein: Yes, all right. I think that's all the questions I have. Any questions?

Mr. Poole: No.

Mr. Gladstein: Any questions, your Honor?

The Court: No.

Mr. Gladstein: That's all, Mr. Claunan. Thank you very much [347]

(Witness excused.)

Mr. Gladstein: Now, your Honor, I have called a total of somewhat more, I think, than half the defendants and Cross-Complainants in this case. I don't have the exact count.

The Clerk: 21.

Mr. Gladstein: Well, it is just half. And I would like to make a statement and representation to the Court concerning the remaining defendants and cross-complainants. In the first place——

The Clerk: 22.

Mr. Gladstein: 22? Slightly more than half, is that right, Mr. Clerk? In the first place, your Honor, the stipulation of facts in this case covers the nature of activities performed and the hours of work that were worked by each of the remaining defendants and cross-complainants, just as the stipulation does with regard to the 22 witnesses who have been produced here by us. And they are in great detail. I may say to the Court, and I do say that I have caused each of these defendants, cross-complainants, to have these records submitted so that they can examine them and pass upon and make any corrections, if any, to the contents of the statements. And the only reason that I am not calling the remaining defendants is in the main because of language difficulties and the necessity that would be occasioned for having interpreters. But in going over these statements with the other defendants and [348] cross-complainants who have not taken the stand, they have uniformly advised me that they are satisfied with the correctness of the statements and computations and figures shown on the pages of the stipulation that deal respectively with them. None of them has any records of any kind to dispute in any manner the computations and statements that are shown in the stipulation. None of them has any specific recollection, as obviously no person could have, of the precise number of hours that he worked on a particular day and during the particular work week as long back as four years ago. But they are sat-

isfied uniformly in going over these figures in recalling to their minds that this period starts just after the 1946 strike ended. And examining the little variations that occurred at the outset as to the number of hours of work that they worked in each week, and then observing the pattern that is shown thereafter, they are uniformly satisfied and have so advised me of the correctness and reliability of the facts contained in this stipulation.

Now, there is one man whom I haven't called that I would have wanted to call, but he sustained a stroke a couple of months ago on the job, and he is in the hospital. I saw him at the hospital. That is the defendant Pedro Dumlao, a canecarrier operator, and the man who has worked for this company since 1920; and there are many others who have worked for the company long numbers of years. I mention this in passing. For example, the defendant Dionicio Carrit has worked for [349] the company 28 years; Giichi Hamamoto has worked for the company about 18 years; Apolonio Lazo has worked 17 years; Y. C. Lee has worked for the company 27 years; Takumi Okouchi has worked 35 years; and Hatsusuke Sera has worked for the company for 43 years; and Jiro Sakai has worked for the company for 22 years. All these men, and all of the rest of the defendants, have assured me that they are satisfied with the correctness of these computations.

I may say to the Court that in those cases where there were language difficulties, I enlisted the assistance of interpreters and had interpreters whom

I was satisfied with that they were qualified to assist me in the communications back and forth, so that I came away with the feeling of satisfaction based partly on my talks with these men and partly on my own examination of the records that the company kept, the original records, and the methods by which these computations were made. So that this stipulation should be regarded by the Court as a joint product which is supported by the good faith, belief, on the part of both sides that the statements contained in it are accurate and reliable, subject of course to stenographic and such trivial errors as human fallibility will occasion. But otherwise that it is accurate.

Now, I had announced yesterday that I was going to call Mr. Jack Hall as a witness. I have reconsidered that and will not produce him as a witness. And therefore, as far as the [350] balance of my case is concerned, I have just some further examination of Mr. O'Donnell. And I don't know what Counsel for the Plaintiff has. And then I have some documents that I wish to introduce. I guess I can do it through Mr. O'Donnell. Yes, I think probably during his examination.

Mr. Poole: Your Honor, could we have a short recess?

Mr. Gladstein: He wants a short recess.

Mr. Poole: So that Counsel for the parties can have a conference.

The Court: Yes, all right, we will take a recess.

(A short recess was taken at 10:40 [351] a.m.)

After Recess

Mr. Poole: Just prior to the recess Counsel for the defandants made a statement indicating the extent to which he had gone in satisfying himself that the facts contained in the stipulation were true and correct. The attorneys for the plaintiff wish to say that we are satisfied that he did go into the records and examine the individual employee defendants sufficiently to determine that question. We are very conscious of it because of the fact that we know the employees were called out from their jobs and the fact that he went into the records. And we wish to reaffirm what we said the other day, that on our part we feel very certain that, except for possibly minor facts, the stipulation, as it now stands, is true and accurate.

However, at this time we should like to ask the Court for leave to file an amendment to the stipulation, a rather minor amendment, which would modify the stipulation in those few particulars in which we find that the records support the testimony that has been given by some of the witnesses, so that the testimony and the stipulation will be completely consistent and in accord with each other, and we will file that, if the Court is willing, sometime today.

The Court: Yes. Well, the differences are rather——

Mr. Poole: Minor.

The Court (Continuing): ——small. There may be just [352] two or three instances where there

is some materiality in the differences, but I think not more than that.

Mr. Poole: Well, I think we only have four or five in which we think the Court might be interested in knowing what the true facts are.

The Court: Yes.

Mr. Poole: I think most of the inconsistencies which were shown by the testimony weren't inconsistencies, because the facts that were testified to could not be tied down to the period of time covered by the suit. The witness frequently was testifying to things that he had done over his whole period of employment.

Mr. Gladstein: But there were some instances where the testimony of the witnesses showed, not that the stipulation was inaccurate, but that it did not include one or two matters, so that there was a small degree of incompleteness about it

The Court: All right. Any amendments of that sort are in order and may be made. Will they be stipulated?

Mr. Gladstein: Yes, they will be, because I desire to join in them.

The Court: I should say at this point that my understanding of the satisfaction of all the witnesses who testified was that they agreed to the accuracy of the timekeeping, the work they did, the hours worked, the rate of [353] wages, but that they did not intend to agree that they are entirely satisfied with the amount of pay that they received.

Mr. Gladstein: That is correct, your Honor. I think your Honor is quite correct about that.

Mr. Poole: Their disagreement probably went to the question as to whether or not they had been paid overtime compensation——

The Court: That is the way I understood it.

Mr. Poole (Continuing): ——for all hours after 40. I don't think there was any disagreement with respect to the straight time compensation they received.

The Court: That is true.

Mr. Poole: That is, it goes to the question of law which is really involved here, as to whether they were entitled to overtime compensation for hours after 40.

Mr. Gladstein: Your Honor has it correct.

The Court: Yes.

Mr. Gladstein: I may say, in view of Mr. Poole's statement agreeing with the correctness of my representation to the Court just before the recess, there is one question I would like to put to the Court, and that is whether the Court feels satisfied that it would be unnecessary to call any further witnesses, that is, defendants and cross-complainants, and whether the Court feels satisfied it has adequate evidence here upon which to make the findings that are required. [354]

The Court: From what you have said of your examination of all of these witnesses, which is corroborated, at least to the extent that you had an opportunity to examine them, or I assume that you must have gone over the same matter with them—and I think you have stated that you did.

Mr. Gladstein: Yes, your Honor.

The Court: That is, showed them these very carefully and comprehensively prepared statements of what the Plantation record shows; and that they all agreed——

Mr. Gladstein: Yes.

The Court (Continuing): ——that that was a truthful statement of the manner in which they had been dealt with.

Mr. Gladstein: Yes, and I can assure the Court that if those defendants who have not been called were in fact called, they would testify just as the witnesses have testified who have been called, namely, that they were satisfied with the correctness of the stipulation.

The Court: I believe that to be true and I see no point in going over the same rigamarole with twenty more witnesses.

Mr. Jenks: On the question of the examination of the witnesses with respect to the circumstances under which they received overtime pay, the questions were often phrased: Did you receive overtime pay after 48 hours or 40 hours? And they answered correctly with reference to that. Those questions [355] ignored the fact that they received overtime pay for hours after 8 hours a day or work on their day off.

Mr. Gladstein: I thought I made that clear.

The Court: I thought that was clear.

Mr. Jenks: I would like you to make it clear.

Mr. Gladstein: I want to say that I am satisfied from examination of the records and from my

talks with all the defendants and cross-complainants that in those cases where there were more than eight hours in a particular day, they did get time and a half for the hours in excess of those eight on that particular day.

The Court: Yes.

Mr. Gladstein: And that the same thing is true for work on their day of rest; and there were some holidays where that was also true, as called for by the collective bargaining agreement.

The Court: Well, the statements made, and the demeanor of every witness I observed during his examination, some through direct statement of witnesses, showed that they had every confidence in the fairness of the Company in its accounting, and paying, and dealing with them. So, as you say, it leaves nothing in my mind except the question of law.

Mr. Poole: That is right.

The Court: And that is the difference of opinion between you. [356]

Mr. Gladstein: We might as well finish with Mr. O'Donnell and then I can put in certain documents and I will be through.

The Court: I should say now that we can't get through this case today and give you gentlemen a full opportunity to present your argument. I have made arrangements already to give you Tuesday, Monday being a holiday, Tuesday forenoon.

Mr. Poole: I am going to waive argument.

Mr. Gladstein: We are both going to waive argument.

Mr. Poole: And submit a brief in support of my findings.

The Court: Can you get through by half past twelve?

Mr. Poole: Yes, your Honor, I think so.

The Court: All right.

RAYMOND JOHN O'DONNELL

recalled as a witness on behalf of the Plaintiff, having been previously duly sworn, was examined and testified further as follows:

The Court: You have been sworn in the case, Mr. O'Donnell.

Cross Examination
(Continued)

By Mr. Gladstein:

Q. I have just a few questions to ask you, Mr. O'Donnell. Pursuant to law, during the period we are concerned with in [357] this case, your Company withheld from wage payments to the employees involved in this case certain amounts as and for withholding tax; isn't that right?

A. Yes. [358]

* * *

Q. (By Mr. Gladstein): So, Mr. O'Donnell, if I can replace that question, you did withhold from wages to these employees who are defendants in this case certain amounts that you turned over to the Government as withholding taxes, didn't you?

A. That is correct.

(Testimony of Raymond John O'Donnell.)

Q. In so doing, did you withhold tax from all of your employees, or only from portions of them?

A. Just from portions of them.

Q. And which portions did you not withhold tax from?

A. Those that were not included in decisions and notices sent to us by the Social Security. [361]

Q. I am talking about withholding tax now.

A. May I say that withholding and Social Security went hand in hand. When we took Social Security tax, we took withholding.

Q. Did you, in regard to the amounts you withheld for income tax, withholding tax ——

A. Yes.

Q. (Continuing): ——and also in regard to the amounts you deducted for Old Age Benefits and other Social Security payments, deduct from exactly the same employees in all cases?

A. In all cases.

Q. All right. So there were certain employees from whom you made no deductions either for purposes of withholding or for purposes of Social Security; is that right A. That is correct.

Q. Am I correct that the employees from whom you did not take any deductions from their wages are generally called the agricultural employees?

A. For the main part that is correct.

Q. And at what point was the line drawn by your Company?

A. I should like to make it plain that there was

(Testimony of Raymond John O'Donnell.)

no line drawn by the Company. We were simply complying with the regulations issued.

Q. I understand that, but what was the [362] line of demarcation between those employees from whom you did make the deductions and those whom you did not? A. Field workers primarily.

Q. Were the ones from whom you did not?

A. Did not take deductions.

Q. And up to what point in the operations of the Company did you include these field workers? You tell us.

A. Well, there were certain exceptions, so that I can't say it was all operations up to a given point.

Q. First of all let's treat the general matter, and then you can name the exceptions. A. Yes.

Q. Tell us what the line of demarcation was first and then you can name the exceptions to it.

A. We deducted or withheld no Social Security tax—"deducted," I guess, is better than "withheld"—for those people engaged in plowing, planting, rattooning, cultivating, fertilizing, irrigating, harvesting, those individuals who were concerned with the handling of water that was purely of an agricultural use.

The Court: At that point, there are one or two items there that are usually understood in a general way, but just where they begin or end might be open to a question. Now, harvesting: yes, we all understand that, but where does it end in the matter that is under discussion? Where did [363]

(Testimony of Raymond John O'Donnell.)

harvesting end as to these people who were excluded?

The Witness: When the cane was delivered on the main line.

The Court: Loaded in cars in the field and brought out to the main line?

The Witness: Yes.

Q. (By Mr. Gladstein): Is that correct?

A. That is correct. I wanted to elaborate on that particular point there.

The Court: Yes, I wanted you to.

The Witness: We held that the railroad employees—at least under our interpretation of a decision given us by the Social Security, we felt that the railroad department was covered by Social Security, and we latterly found out they were not covered by Social Security, and we had to apply for refunds to those locomotive and railroad workers, because the Social Security administrator ruled they were not subject to Social Security.

Q. (By Mr. Gladstein): What were they subject to? Railroad retirement? A. No.

The Court: Leaving out the railroad workers, that is the main line railroad workers—I want to get the picture of what you mean by that—your harvesting and all people engaged in what you considered harvesting ended when they got [364] the cane on the conveying cars and got the cars down to the main line?

The Witness: That is correct.

(Testimony of Raymond John O'Donnell.)

The Court: Now, how did you bring the cars out over the portable tracks, with horses or tractors?

The Witness: Tractors.

The Court: Tractors. You pulled them out a few at a time and got them down to the main line, or where the locomotive from the main line could hitch onto it?

The Witness: That is correct.

Mr. Poole: Your Honor, that is set forth very meticulously in the stipulation, just how it comes out.

The Court: Well, I hadn't read the stipulation.

Q. (By Mr. Gladstein): Mr. O'Donnell, when you said "latterly," what do you mean "latterly"; when? A. As of January 1, 1948.

Q. And since that time you have not been making deductions from the railroad employees?

A. That is correct.

Q. What about the shop employees?

A. The shop employees have Social Security and Withholding taxes deducted from them.

Q. And the village maintenance employees?

A. And the village maintenance employees also.

Mr. Gladstein: Now, I asked Counsel—— [365]

The Court: How about the mill? You haven't mentioned the mill.

The Witness: The mill was Social Security and Withholding tax.

The Court: You wouldn't classify them as "agriculture"?

(Testimony of Raymond John O'Donnell.)

The Witness: No.

Q. (By Mr. Gladstein): They were industrial workers, were they?

A. They were industrial under the Social Security.

Mr. Poole: He is talking about this Act now. This examination has to do with the application of the Social Security Act; he is not talking about any other act.

Mr. Gladstein: I am not seeking to get an admission from this witness on the stand that will decide the question of law.

The Court: I understand that. Dealing with these employees, the classification is as to Social Security.

Mr. Poole: Taxes.

Q. (By Mr. Gladstein): Were there any other respects in which in your operations you made this same kind of distinction that applied in the line of demarcation where cane was delivered to the main line?

A. I don't think I understand exactly what you mean.

Mr. Gladstein: Would you reread the question?

(Question read.) [366]

A. No.

Mr. Gladstein: Now, your Honor, in the previous hearing we offered in evidence, and it was received, an exhibit which was marked Defendant's Exhibit No. 2. This exhibit is a series of job descriptions,

(Testimony of Raymond John O'Donnell.)

or, I should say, job requirements rather, job requirements and qualifications that refer to and apply to the employees of this Company. These pages contain statements setting forth the kind of skills and technical experience and qualifications that employees are required to have in order to enable them to perform and discharge certain duties and functions of various jobs.

In the former hearing we had Mr. Anderson go through this exhibit and place tabs on various pages to indicate which of those job requirement statements applied to particular defendants in this case. At the present juncture we have set forth before the Court a detailed statement of what the defendants actually did, without regard to any requirements, and therefore those tabs in the prior hearing are of no meaning at the present time.

At the same time, I regard it as material and, as I understand it, Counsel is not objecting to an offer which I now make of offering this same exhibit which formerly was Defendant's Exhibit No. 2. I now offer it as a defendant's exhibit for the sole purpose of introducing evidence which [367] both sides agree is correctly set forth and is a true and accurate statement of what it purports to set forth, showing the skill requirements and experience and training qualifications that are required for the doing and performing of various jobs in the operations of this Company; and I therefore now make that offer and ask the Court

(Testimony of Raymond John O'Donnell.)

to make whatever order is appropriate to release that exhibit from the record of the prior hearing and receive it in the record of this hearing, because other copies are difficult to get.

Mr. Jenks suggests, and I want to make this statement to the Court, that by my offer and by the contents of the document I am now offering I am not seeking to modify in any way the stipulation we have entered into as to what the defendants and cross-complainants actually did. I am introducing this solely to show the kind of skill requirements, training requirements, and experience qualifications that these defendants have to have in order to perform these duties.

Mr. Poole: In view of the fact that this offer is being made for a limited purpose, that is, to show what qualifications and training the individual employees are required to have to hold particular positions, I offer no objection to it. However, I want to observe that in the judgment of Counsel for the plaintiff it is immaterial, but I don't think I am going to keep it out.

The Court: It may be received as—what exhibit is [368] that? I think we had one exhibit in.

Mr. Gladstein: That was for the plaintiff.

The Clerk: Defendant's Exhibit No. 1. [369]

* * *

Mr. Gladstein: * * * As I understand it, that is receivable as Defendant's Exhibit 1.

The Court: Identify it in some way.

(Testimony of Raymond John O'Donnell.)

Mr. Gladstein: It is a bound group of pages with [370] the designation on the first page "Waialua Agricultural Company, Limited," and a similar designation on every page thereafter.

The Court: Can't we identify it by the exhibit number it had before?

Mr. Gladstein: It was Defendant's Exhibit No. 2 in the prior hearing. It was then admitted on the 19th of September, 1947.

(Thereupon, the document above referred to was received in evidence as Defendant's Exhibit No. 1.)

Mr. Gladstein: Now, your Honor, I want to offer in evidence certain pages from a manual of the Hawaiian Sugar Planters Association, to which the Waialua Company belonged and of which it was a member. That is a correct statement of fact, isn't it, Mr. Poole?

Mr. Poole: It is.

Mr. Gladstein: And these pages were also received in evidence in the prior hearing. They are a group of six pages setting forth the organization of the Plantation and data concerning the refining of raw sugar, and so on. These were received in evidence in the prior hearing, and I now reoffer them as the Defendant's Exhibit next in order.

Mr. Poole: Your Honor, when these were offered at the first trial the plaintiff objected to their being received [371] in evidence for the reason that the

(Testimony of Raymond John O'Donnell.)

data contained therein is with respect to all plantations in the Territory of Hawaii, and it was also pointed out, and I think it is correct, because it is the same exhibit, that much of the information was inaccurate with respect to the period of time involved in the suit.

Mr. Gladstein: 1946 and 1947?

Mr. Poole: That is correct. Because these particular pages, I think the old record will show, were published in a manual which was gotten out of the Washington office of the HSPA a few years before; and I think that you yourself acknowledged——

Mr. Gladstein: Some of the companies were defunct, or something like that? I offer this only in so far as Waialua is concerned.

Mr. Poole: I think you yourself acknowledged that some of the statistics relating to the railroad assistants of the Plantation were inaccurate.

Mr. Gladstein: If I remember correctly, it is simply that the march of progress had gone on and in subsequent years there were differences, but we are dealing now with 1946 and 1947, and what I want here really is the facts of the Plantation organization and its affiliation to certain factors, that is, the Castle & Cooke, Limited, agency and to the HSPA, and the material set forth there. [372]

But, in any event, this was offered and received before, and I now offer it again, your Honor. I know that Mr. Poole objects to it, but I think it is material and should be received.

(Testimony of Raymond John O'Donnell.)

Mr. Poole: One of the particular purposes for which he is offering it is the diagram which is contained on page 10, which is entitled "Plantation Organizations." There is certainly no evidence in this case that Waialua Agricultural Company, the plaintiff in this case, was organized as indicated on this chart during the years involved in this suit.

Mr. Gladstein: I will ask the witness about that.

Q. (By Mr. Gladstein): Mr. O'Donnell, I want you to look at these pages taken from the HSPA Manual. You see, I have showed you something that is a diagram, entitled "Plantation Organizations," and it shows the organization of a plantation with a manager at the top, and then it shows the lines of authority to the field and factory and shops, the office, the industrial relations, and so on.

Would you say that generally that reflects the kind of organization that existed at Waialua in 1946 and 1947?

A. Generally, with some differences. I wouldn't say that this was a replica.

Q. Do you mind pointing out the differences, if you can?

A. The assistant manager would not be under the field, [373] for one.

Q. Where would he be?

A. He would be under the manager.

Q. All right. Where else?

A. The factory and shops would not report to

(Testimony of Raymond John O'Donnell.)

the manager, but would report to the assistant manager.

Q. Yes.

A. The office and the industrial relations would likewise report to the assistant manager. The harvesting, cultivation, and agricultural people would report to the field superintendent, who, in turn, would report to the assistant manager.

Q. As to the rest of it, would you say that the chart, or diagram, is substantially a reflection of the plan of organization that existed at Waialua in 1946 and 1947?

A. Except down below, the other departments, the civil engineer, the store, medical; civil engineer would report to the assistant manager, the transport of trucks would report to the field superintendent, the railway dispatcher would report to the factory superintendent, construction work would be under the assistant manager.

Q. And otherwise it is all right?

A. Otherwise it would be similar.

Q. Now, some of these other pages in this exhibit we are talking about, Mr. O'Donnell, point out that there are [374] certain agencies or factors in operation in this Territory who are set forth as Alexander & Baldwin, American Factors, C. Brewer & Company, Castle & Cooke, Theo H. Davies, F. A.—is it Schaefer? A. Yes.

Q. Schaefer.

Mr. Poole: Your Honor, I want to object.

(Testimony of Raymond John O'Donnell.)

Mr. Gladstein: I am about to ask a question.

Mr. Poole: I am going to object to the statement you are making to the witness for the purpose of laying your foundation for a question. I think it is improper and I don't see any relationship between the foundation you are laying and the question I know you are going to ask and the issues in the case.

Mr. Gladstein: I don't think Counsel is entitled to do that. I think Counsel is entitled to object to my question when I have asked it.

Mr. Poole: I will withdraw the objection.

Q. (By Mr. Gladstein): To continue, I am showing you this, Mr. O'Donnell, and after F. A. Schaefer & Comanpy, there is Bishop Trust Company.

Now, let me ask you: Of your own knowledge, isn't it true that there are certain agencies or factors that have been for many years and now are in existence and in operation in this [375] Territory?

Mr. Poole: I object for the reasons that I have stated. The question is completely immaterial to the issues of the case.

The Court: Tell me, if you can, why you consider it material to the case, the fact that there are agencies and factors who deal with plantations.

Mr. Gladstein: It isn't essential to prove this in order to recover for my clients, but it is a part of the system or plan of organization that actually

(Testimony of Raymond John O'Donnell.)

exists and that is all, and in order to correctly reflect in the record what the factual situation is, I felt that it would be well to show that Waialua not only has its own plan of organization in its operations, but also, as your Honor knows from proceedings yesterday or the day before, that it is affiliated in the manner that the evidence shows to the California and Hawaiian Sugar Refining Corporation, and also to the Hawaiian Sugar Planters Association, and also to one of these several agencies or factors. But I don't deem that it is decisive and I am not going to press it. I am simply going to offer it and take the ruling of the Court without further argument.

Mr. Poole: Your Honor——

The Court: Pardon me. Does that show what the duties or services or authorities of the agencies of the plantation are, to what degree they affect the operation of the plantation? [376]

Mr. Gladstein: It doesn't show here, but it is my understanding—and I know if I am misinformed I will be corrected by Mr. Jenks or Mr. Poole—it is my understanding that the companies that are joined together in and comprise one of these agencies or factors are controlled by that factor. In other words, by way of illustration, take Waialua Company, which is involved here; it is a part of an agency called Castle & Cooke, Limited, which includes Ewa Plantation and Kohala Sugar Company, as well as Waialua. It is my understanding

(Testimony of Raymond John O'Donnell.)

that Waialua and the other two companies are at all times subject to the control of the agency. This operates partly through interlocking directorates and through whatever other legal relationships that are necessary for that purpose exist. That is my unde standing, and if I am wrong about it, I know Mr. Jenks, who is attorney for Waialua and Castle & Cooke, will be the first to correct me. What about it, Mr. Jenks?

Mr. Poole: Well, I want to make a remark. We will not, unless your Honor requires us to get on the stand and testify, reply to statements which in our judgment are completely extraneous to the issues in this case, have nothing to do with it.

As has been pointed out repeatedly, in the opinion of the Ninth Circuit the task of this Court is to determine the duties of these employees work week by work week. And I [377] noticed last night in reading this opinion that the Ninth Circuit thought that it was completely immaterial whether or not a plantation was highly mechanized, whether or not they hauled their cane by water buffalo or whether they hauled it by train. They also said size could make no difference.

Mr. Gladstein: This has nothing to do with size. This has to do with control.

Mr. Poole: I beg your pardon. I am not through with my remarks. If size can make no difference, if mechanization and highly developed techniques, agricultural economy, can make no difference, why

(Testimony of Raymond John O'Donnell.)

is it necessary to go into corporate organization and affiliation to pass upon the question as to whether or not a particular employee in a particular work week was entitled to overtime compensation.

It is very clear to us and it will be clear to the appellate court that the attorney for the defendants is seeking to put this in for prejudicial purposes only and to confuse, and I will object to it and will take an objection if it goes in.

Mr. Gladstein: The Waialua Company is an alter ego. It is one of the companies that is an alter ego of Castle & Cooke, Limited. That is my information and that is why I put the question to Mr. Jenks. My understanding is all these companies are controlled by the agency or factor to which they belong. In other words, this goes to the point [378] that Mr. Poole argues in this case, that Waialua is a farmer. Waialua is just as much a farmer as Castle & Cooke is, and Castle & Cooke is closer to being a banker in interstate commerce, a huge industrial operation, than anything else.

Mr. Poole: Is the advocate for the other side testifying or is he arguing?

Mr. Gladstein: Arguing, but I want to have Mr. Jenks answer the question, which he seems disposed not to.

Mr. Jenks: I will state the statements Mr. Gladstein has made to the Court on information and belief are assumed not correct.

(Testimony of Raymond John O'Donnell.)

Mr. Gladstein: It seems to me we got diverted here simply on the question of my re-offer of documents in this record—of certain pages, rather. These pages are designated as Defendant's Exhibit No. 4 in the previous proceeding. They were admitted. Mr. Poole is the gentleman who just a few minutes ago said, well, the previous record is probably a part of the record in this case anyway, and yet he wants to keep out a portion of that very same record. It seems to me he is taking a very inconsistent position.

Without further argument I want to offer Defendant's Exhibit No. 4 from the previous hearing, which was admitted on the 22nd of September, 1947, as the exhibit next in order in this case.

Mr. Poole: Objection. [379]

The Court: Received.

The Clerk: Defendant's Exhibit No. 2.

(Thereupon, the document above referred to was received in evidence as Defendant's Exhibit No. 2.)

* * *

DEFENDANTS' EXHIBIT No. 2

Organization

While each of the thirty-six plantations in the Hawaiian Islands is a corporate entity, all their affairs, except the actual operation of sugar growing, are centralized in what are known as factors, general agents offering a multitude of services to their clients. There are five principal factors: Alexander & Baldwin, Ltd.; American Factors, Ltd.,

(Testimony of Raymond John O'Donnell.)

Defendants' Exhibit No. 2—(Continued)

C. Brewer & Co., Ltd.; Castle & Cooke, Ltd., T. H. Davies & Co., Ltd. These handle the affairs of thirty-four Hawaiian plantations. Two other agencies, F. A. Schaefer & Co., Ltd., and Bishop Trust Co., Ltd., serve one plantation each.

The functions of the factors may be summarized as follows:

Financial: All fiscal matters of the plantations are handled by specialists in the offices of the factors. Monies are received and disbursed, tax statements prepaid, water and land rents paid or received, surpluses invested or deficits advanced.

Experimental: Engineers and other technicians are constantly seeking ways to improve the output of the various client plantations.

Shipping: All the multitudinous detail of shipping huge quantities of sugar by water to the mainland is in the hands of the factors.

Merchandising: Through their mainland buyers, the factors provide a steady flow of needed merchandise to plantation stores and to the plantations themselves. Because of the size of their operation, everything a plantation and its personnel need is provided at a minimum cost.

The agencies in Hawaii, with the plantations they represent and their output in short tons of sugar

(Testimony of Raymond John O'Donnell.)

Defendants' Exhibit No. 2—(Continued)

96° raw value equivalent, as of the calendar year 1944, are as follows:

Alexander & Baldwin, Ltd.	
Hawaiian Commercial & Sugar Co.	68,685
Kahuku Plantation Co.	16,897
Maui Agricultural Co.	40,766
McBryde Sugar Co., Ltd.	24,655
Total	151,003
American Factors, Ltd.	
Grove Farm Co., Ltd.	11,797
Kekaha Sugar Co., Ltd.	40,538
Koloa Sugar Co., Ltd. The	11,865
Lihue Plantation Co., The	63,761
Oahu Sugar Co., Ltd.	46,839
Olaa Sugar Co., Ltd.	41,915
Pioneer Mill Co., Ltd.	39,883
Waianae Company	3,085
Waimea Sugar Mill Co., The	2,840
Total	262,523
C. Brewer & Co., Ltd.	
Hakalau Plantation Co.	26,509
Hawaiian Agricultural Co.	28,079
Hilo Sugar Co.	24,774
Honolulu Plantation Co.	14,633
Honomu Sugar Co.	10,271
Hutchinson Sugar Plantation Co.	16,589

(Testimony of Raymond John O'Donnell.)

Defendants' Exhibit No. 2—(Continued)

Kaeleku Sugar Co., Ltd.	5,793
Kilauea Sugar Plantation Co.	10,619
Olokele Sugar Co.	18,872
Onomea Sugar Co.	23,776
Paauhau Sugar Plantation Co.	15,636
Pepeekeo Sugar Co.	15,818
Wailuku Sugar Co.	17,992
Waimanalo Sugar Co.	5,159
Total	234,520

Castle & Cooke, Ltd.

Ewa Plantation Co.	45,059
Kohala Sugar Co.	38,043
Waialua Agricultural Co., Ltd.	54,684
Total	137,786

Theo H. Davies & Co., Ltd.

Hamakua Mill Co.	20,147
Kaiwiki Sugar Co., Ltd.	13,884
Laupahoehoe Sugar Co.	16,742
Waiakea Mill Co.	14,902
Total	65,675

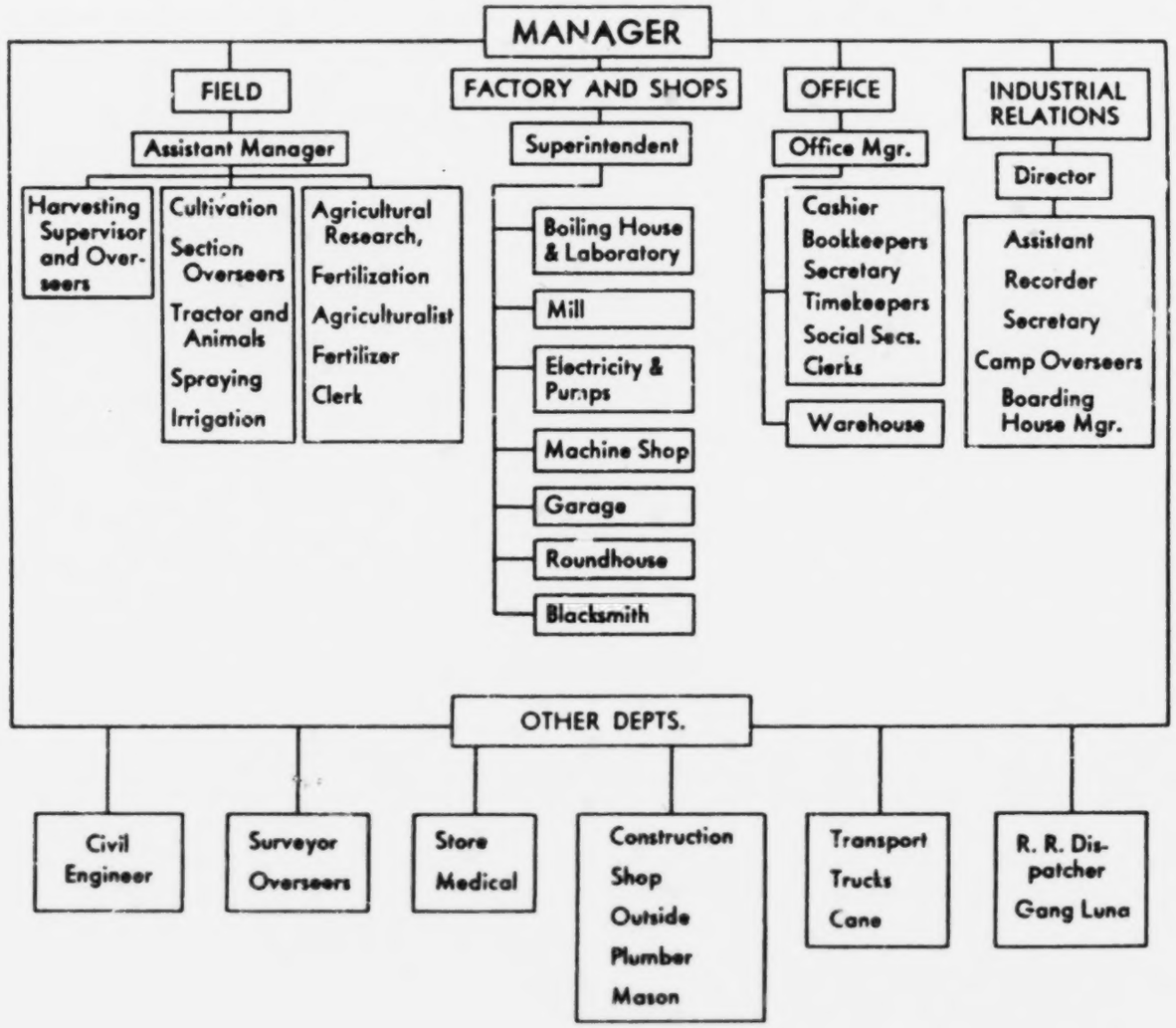
F. A. Schaefer & Co., Ltd.

Honokaa Sugar Co.	15,838

Bishop Trust Co., Ltd.

Gay & Robinson	7,602
Total All Sugars	874,947

PLANTATION ORGANIZATIONS



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(Testimony of Raymond John O'Donnell.)

Defendants' Exhibit No. 2—(Continued)

Taxes Paid

Sugar and pineapple industries are the largest taxpayers in Hawaii. The Territory received $837,-731 from the sugar and $572,450 from the pineapple industry in gross income tax (territorial).

Personal property tax paid by the sugar industry in 1945 was $1,098,563 of a total of $3,679,438 for the Territory. Real estate tax paid was $1,487,-489 on $41,715,394 that represented the assessed value of its lands. Assessed value of all Hawaiian land was $212,305,504.

Refining of Hawaiian Raw Sugar

Established in 1906 as a cooperative organization, the California and Hawaiian Sugar Refining Corp., Ltd., annually refines approximately 55,000 tons, or nearly two-thirds of the Hawaiian sugar crop. The C. and H. refinery, one of the largest in the world, is located at Crockett, Contra Costa County, California. The plant is on the south shore of the Straits of Carquinez, thirty miles north and east of San Francisco.

Additional Hawaiian raws, about 110,000 tons, are melted each year in the modern refinery of the Western Sugar Refinery on San Francisco Bay.

Twenty-six of Hawaii's thirty-six plantations share the ownership and management of C. and H. Raw sugar and molasses flows each month from the

(Testimony of Raymond John O'Donnell.)

Defendants' Exhibit No. 2—(Continued)

holds of ships into the American market through C. and H., and by a balance system a uniform price is paid to all plantations.

C. and H. is an agricultural cooperative, complying with the provisions of the Capper-Volstead Act authorizing the formation and operation of associations of producers of agricultural products. All of its stock is owned by its producer members, substantially in the same proportion as the tonnage of raw sugar which they ship to C. and H.

(Testimony of Raymond John O'Donnell.)

Defendants' Exhibit No. 2 –(Continued)

RAILROAD SYSTEM

Plantation	Miles Track	Port Track	Cars	Engines	Value
Ewa	28.95	8	705	6	$ 449,589.41
Aiea	36.5	6	500	5	58,652.38
Kahuku	30	2.73	264	3	44,283.36
Oahu	55.55	....	984	8	1,142,273.31
Waialua	55	10	784	6	798,958.78
Waianae	15	2.84	194	3	126,931.90
Waimanalo	7	3	207	3	58,791.02
Grove Farm	13.5	4	12	3	Not available
Haw. Sugar	35	4.5	650	6	202,000.76
Kekaha	20	4	560	5	76,322.49
Kilauea	11	....	260	5	135,954.18
Koloa	19.5	5.17	350	3	428,316.73
Lihue	80.6	11.5	750	4	1,361,315.65
McBryde	25	6	500	4	489,913.09
Waimea	4.5	1	70	1	30,584.00
Haw.C.&S.	77	11	1,191	7	847,142.49
Kaeleku	12	....	200	4	15,730.03
Maui	35	8	915	5	805,837.17
Pioneer Mill	36.3	7	894	7	378,539.38
Wailuku	17.2	5	375	3	141,417.38
Hamakua	16	1	211	5	123,501.73
H. Agri. Co.	1	2	150	2	99,011.26
Honokaa	12	....	185	4	216,079.86
Hutchinson	3.5	....	110	2	63,804.49
Kaiwiki	6.48	....	111	2	31,262.72
Kohala	....	2	130	2	428,316.73
Olaa	35.5	10	550	6	230,118.24
Paauhau	3.5	....	254	2	205,089.65
Waiakea	26	6	170	6	Not available
Total	718.58	120.74	12,236	122	$8,989,738.19

(Note: The nine remaining plantations either use outside facilities or have no railroads. Gay & Robinson uses the system of the Hawaiian Sugar Company; Kipu that of the Lihue Plantation; and Hakalau, Hilo, Honomu, Laupahoehoe, Onomea, Pepeekeo and Wailea flume their cane.)

Admitted September 1, 1950.

(Testimony of Raymond John O'Donnell.)

* * *

Mr. Gladstein: Now, in the previous hearing, your Honor, there was received in evidence as Defendant's Exhibit No. 1 this publication that I have referred to, which is entitled "Labor in the Territory of Hawaii," and I want to [380] reoffer it in evidence. I want to offer it in evidence now as the defendant's exhibit next in order; and along with this offer, let me make an explanation of a further offer that I am about to make.

At the time that that offer was made in the prior hearing, Mr. Poole objected and that objection was overruled and this was received. At the time this case was pending in the Circuit Cou. of the United States a subsequent edition—well, I shouldn't say a subsequent edition, but another publication by the Department of Labor came out, entitled "The Economy of Hawaii in 1947." Now, this second publication purported to bring up to date the material contained in the first one. Both of these publications represent and constitute reports that are submitted by the Secretary of Labor to the Congress of the United States pursuant to a requirement of the Organic Act by which the Territory of Hawaii was admitted to territorial status of the United States of America. And they are official publications of the United States Government.

Now, when the second document, the one called "The Economy of Hawaii in 1947," came out—The date on which it came out, by the way, was—Well, it was under date of January 29, 1948, was

(Testimony of Raymond John O'Donnell.)

the letter of transmittal, but it didn't come out until sometime after that in booklet form. It was not available until sometime after that. In any event, while this case was under submission in the Ninth Circuit; in [381] other words, sometime after January of 1949, this came out and became available.

Mr. Poole and I argued the case before the Circuit Court in January of 1949, and while the case was pending, after the argument and while the case was pending, this document became avaliable, and Mr. Poole submitted copies of it to the Circuit Court, and the Circuit Court had these copies before it at that time. Mr. Poole called attention in his briefs, or his letters, to the Court to certain statements contained in it.

What I want to do now is to offer both of these, because I think the later one without the former would be incomplete, and both of them are material to this case; so I now offer as defendant's exhibit next in order, as No. 3, the 1939 document, "Labor in the Territory of Hawaii," which was Defendant's Exhibit No. 1 in the prior case; and as Defendant's Exhibit 4 in this case, the document entitled "The Economy of Hawaii in 1947," being the same document that Mr. Poole himself submitted to the Circuit Court.

Mr. Poole: I should like to inquire of Counsel first whether he is willing to offer these two separately. He offered them as one exhibit. I am asking whether he is willing now to offer them sepa-

(Testimony of Raymond John O'Donnell.)

rately, for the reason I am going to make different objections.

Mr. Gladstein: I did offer them separately, but I don't think either should be admitted unless both of them [382] are, and since one of them was received before, I think both of them should now be received.

Mr. Poole: Your Honor, the study that I hold in my hand, entitled "Labor in the Territory of Hawaii 1939," which was submitted in evidence in the first trial, as Counsel for the defendants pointed out, was issued by the United States Department of Labor pursuant to the Organic Act of the Territory of Hawaii, and it purported, as does the later study, which was in 1947, to cover a period of time of five years preceding its issuance. I think it so states in the later study, that is, the study of "The Economy of Hawaii in 1947."

Mr. Gladstein: There is an eight-years difference in the two.

Mr. Poole: That being so, the point I want to make is this: The study of "The Economy of Hawaii in 1947" was the one which embraces the period involved in this suit, and if either of them is to go in, it is this later one, which covers the period involved in this suit, rather than the earlier one, which is out of date.

I am going to object, however, to either one of them going in, for two reasons: First, it is unnecessary to have introduced into the record any publication of a Government department. The courts

(Testimony of Raymond John O'Donnell.)

traditionally—there are many decisions to support this—have taken judicial notice of such [383] documents, and I am willing to stipulate here that the Court can take judicial notice of either one of them, or any other publication a Government department gets out.

Mr. Gladstein: And treat them in the same manner as though they were part of the record?

Mr. Poole: I think so.

Mr. Gladstein: If you are willing to agree to that, we have no argument.

The Court: I see no point, then, Mr. Poole, to the objection. Certainly if you are going to call the Court's attention to them, to take judicial notice of them, I see no point to your objecting to putting them in the record.

Mr. Poole: Well, your Honor, the Ninth Circuit didn't think kindly of the fact that they were put in.

The Court: Who?

Mr. Poole: The Ninth Circuit.

Mr. Gladstein: Where did they say anything about that?

Mr. Poole: They are critical of the fact there was injected into the record the pamphlets entitled "Labor in the Territory of Hawaii" and "The Economy of Hawaii in 1947."

Mr. Gladstein: You are the one who introduced "The Economy of Hawaii in 1947."

The Court: I don't know that that is a [384] criticism of the record of exhibits that were put

(Testimony of Raymond John O'Donnell.)

in. The word "injected" into the record, "injected" might be construed by one person differently from another.

Mr. Poole: I just have one point: If you put them into the record, you add greatly, it seems to me, possibly to the expense.

Mr. Gladstein: No, because extra copies are available of the later one, and each of us have some of the earlier one, and, although they are hard to get, we can "scratch up" enough so that each of the judges could have one. So the Court's observations are correct.

The Court: Put them in as Defendant's Exhibits 3-A and 3-B.

Mr. Gladstein: Very well, your Honor.

Mr. Poole: I will take an objection, your Honor.

The Court: Yes, an exception.

(Thereupon, the documents above referred to were received in evidence as Defendant's Exhibits Nos. 3-A and 3-B.)

Mr. Gladstein: The defendants and cross-complainants rest, your Honor.

Redirect Examination

By Mr. Jenks:

Mr. O'Donnell, when you testified the other day, you gave some testimony with regard to the practice with [385] respect to the payment of overtime for work on a day of rest. A. Yes.

(Testimony of Raymond John O'Donnell.)

Q. Since that time, at my request, you have examined, have you not, the collective bargaining contract which was in effect during the period of this suit? A. I did.

Q. And you have checked the records of the Company with respect to payment of overtime for work on a day of rest? A. I did.

Q. What was the situation during this period?

A. The situation was that all employees working on their day of rest, whether it was Sunday or any other day during the week, received overtime on the day they so worked.

Q. And was that independently of whether or not they had worked any specified number of hours prior to the day of rest in the same work week?

A. That is correct. Regardless of the number of days they had previously worked, they received overtime if they worked on their day of rest.

Q. So that if a man's day of rest came on Sunday and he was sick, or for any other reason did not work, on Monday, Tuesday, or Wednesday of the work week and only worked on Thursday, Friday, and Saturday, being 24 hours, and then if he worked eight more hours on Sunday, bringing his total for the whole week up to 32, he would receive overtime pay for [386] those eight hours on Sunday? A. He did.

The Court: That would seem to indicate that every employee should be available for six days' work in a week, having one fixed day in the week

(Testimony of Raymond John O'Donnell.)

set aside for that particular individual's day of rest.

Mr. Jenks: Yes, that is contemplated in the collective bargaining contract, which is an exhibit in the case.

The Court: Well, just where is that an exhibit in the case?

Mr. Jenks: It is in the stipulation.

The Court: Oh.

Mr. Jenks: It is an exhibit to the stipulation.

Mr. Gladstein: However, your Honor, if Counsel doesn't object—Well, it is Exhibit B way down at the bottom, so if your Honor would like a loose copy——

The Court: It is going to be pretty hard for the Court to handle.

Mr. Gladstein: Is it all right with you, Mr. Poole? I have just handed the Court a copy of the bargaining agreement.

Mr. Poole: I am agreeable.

Mr. Gladstein: Do you have any further questions?

Q. (By Mr. Jenks): Mr. O'Donnell, you gave some testimony [387] earlier this morning with respect to Social Security deductions. As I recall it, you stated that commencing in 1948 you did not take Social Security deductions for the transportation employees; is that correct?

A. I don't think I designated the date. I said that latterly we didn't deduct from the railroad employees.

(Testimony of Raymond John O'Donnell.)

Q. Why did you change your practice?

A. Because an employee who was engaged for some years in the repair of cane cars reached age 65 and when a representative of the Social Security Department came out to investigate his claim, his Old Age insurance, and in questioning him as to the nature of the work he performed and was told that he had been a cane car worker throughout the year 1948, the agent disallowed his claim for coverage under the Social Security Act, effective as of January 1, 1948, because the railroad was no longer covered by the Social Security Act.

Q. Well, the theory was that this employee was an agricultural worker, so far as the Social Security Act was concerned?

A. That is correct.

Q. He disallowed it for 1948; is that correct?

A. Well, it was into 1948 and 1949. It just happened the first of this year.

Q. In other words, he disallowed the claim for the period commencing January 1, 1948? [388]

A. Yes.

Q. And is it a fact that on January 1, 1948, the OR&L discontinued its railroad operations at Waialua? A. That is correct.

Q. So that commencing in 1948 and continuing thereafter, the transportation system has been used in the hauling of cane and incidental hauling related thereto and has not been used in connection with the carrying of sugar or molasses to the OR&L

(Testimony of Raymond John O'Donnell.)

station or bringing freight into the Company from the OR&L station? A. That is correct.

The Court: That is since when?

Mr. Jenks: That commenced January 1, 1948.

The Court: Yes.

Mr. Jenks: Now, the ruling in effect is this: That under the Social Security Act a railroad employee was covered prior to 1948, because in addition to hauling cane, which was agricultural, he hauled freight, which was not, but thereafter, while he is hauling cane only, he is agricultural.

The Court: Well, you haven't followed that very far. Do you want me to assume that the railroad doesn't haul any freight?

Mr. Jenks: Commencing in 1948, your Honor, when the OR&L went out of business, the freight has been hauled by [389] trucks.

The Court: This depends on what you classify as freight. You give the impression that you might say the railroad didn't haul anything but cane.

Mr. Jenks: That is right. Well, it hauls portable track and it hauls maybe incidental things relating to the sugar operations, but it no longer hauls sugar or molasses, nor does it haul freight into the plantation from the OR&L tracks. That is all done by trucks now.

Recross-Examination

By Mr. Gladstein:

Q. What decision was this you were talking about? You say somebody came out from the Social Security Board, wrote you a letter?

(Testimony of Raymond John O'Donnell.)

A. Every time an individual reaches retirement——

Q. I know, he makes an application.

A. Yes.

Q. Where was that done? In Honolulu?

A. In Honolulu.

Q. Who was it made that representation?

A. The field representative, Mrs. Kon, and it was checked with the Honolulu office to see whether we could not continue to cover our railroad employees.

Q. Did it go any further than that?

A. It went, I think, to Marshall Wise, the head of the [390] Honolulu office.

Q. Did it go any further than that?

A. I don't believe so.

Q. So it didn't go to Washington at all, did it? Is that right? A. So far as I know.

Q. You were asked some questions about the bargaining agreement. Mr. O'Donnell, on page 3 there is reference in the bargaining agreement—that is Exhibit B in our case—There is reference to Units Nos. 1 and 2 "while employed in the jobs, the holders of which were eligible to vote in the election conducted by the National Labor Relations Board, and those agricultural employees in Unit No. 3 while employed in the jobs filled by persons whose names appeared on the agreed cross-check list. * * *" and so on. Just by way of amplifying and elaborating on those portions of the agreement,

(Testimony of Raymond John O'Donnell.)

is there a decision, or is there a series of decisions, in existence of the National Labor Relations Board to which this Court's attention can be directed where there will be found the definition of the units that are referred to, that is Units 1, 2, and 3, and where there will be found a designation of those job descriptions or job titles that fall into the term "agricultural employees" in Unit 3?

Mr. Poole: I object to that question for two reasons: I think it is immaterial, and I think, too, that [391] Mr. O'Donnell should first be qualified as knowing something about this subject matter.

Mr. Gladstein: He has been testifying about the bargaining agreement.

Q. (By Mr. Gladstein): Do you know whether there was such a decision based on an election, Mr. O'Donnell?

A. If there is such a decision, I do not know.

Q. How long have you been with the Plantation? A. Twenty-four years.

Q. Don't you know there was an election some years ago and three units were created? You know that. A. I know there was an election.

Q. And you know that was all supervised by the National Labor Relations Board, don't you?

A. I remember seeing a notice on the building.

Q. You know in connection with the election in order to decide which workers voted and in which unit they were, you had to decide whether they were agricultural or industrial or, there was

(Testimony of Raymond John O'Donnell.)

a third one called something else; you remember that, don't you?

A. I have no direct knowledge of this. [392]

* * *

Redirect Examination

By Mr. Jenks:

Q. Mr. O'Donnell, you referred to a ruling of the Social Security Board and certain Security agents here. There was some question with regard to whether the ruling had gone on to Washington. Do you have any way of knowing whether it went on to Washington?

A. It is my understanding the local administrator's finding is final here.

Q. Do you know whether he sent it to Washington? A. I do not.

Q. Are you in his confidence?

A. I am not.

Mr. Jenks: Your Honor, I am not sure that I made this clear on these rulings with respect to the railroad employees. Would you like me to attempt another explanation of that?

The Court: No, I think I understand that.

Mr. Jenks: You see at one time the railroad employees had connections with the OR&L; thereafter they worked on cane only.

The Court: I understand the OR&L had a spur track to the mill and the Plantation operated over it.

Mr. Jenks: And the ruling in effect is that while

(Testimony of Raymond John O'Donnell.)

the railroad is handling cane it is agricultural labor. [400]

The Court: Yes.

Mr. Gladstein: Mr. Jenks, isn't there a Railroad Retirement Act that applies to railroad employees?

Mr. Jenks: Not to plantation employees.

Your Honor, at this time I would like to offer in evidence I think the first four of the sheets of the documents which are noted as Plaintiff's Exhibit 1, for identification. I think that is sufficient for example.

The Court: That is received.

Mr. Gladstein: Are you sure the rest of it was not referred to by any witness, Mr. Jenks?

Mr. Jenks: No.

The Court: That is received as——

The Clerk: Plaintiff's Exhibit A.

(Thereupon the document above referred to received in evidence as Plaintiff's Exhibit A.)

Civil 707
Plaint. No 1
For Ident. 8-30-50

WAIALUA AGRIC. CO., LTD.
DAILY TIME SHEET
for
MACHINE SHOP

Date _____ 194

Name or Badge	Hrs	OT	Rate		TOTAL
Carl Otholt			Hrs		
			Amt		
Isao Fujii			Hrs		
			Amt		
B. Faria 216			Hrs		
			Amt		
C.Otholt 237			Hrs		
			Amt		
F.Cazinha 307			Hrs		
			Amt		
D.Onuma 335			Hrs		
			Amt		
T.Tanaka 1074			Hrs		
			Amt		
G.Lumasco 7443			Hrs		
			Amt		
[illegible]			Hrs		
			Amt		
[illegible]			Hrs		
			Amt		
TOTAL DIRECT LABOR			Hrs		
			Amt		
Auto			Hrs		
OF SUNDRIES, Etc.			Amt		
TOTAL					

O.K.'D BY: [signature]

661

661

WAIALUA AGRIC. CO., LTD.
DAILY TIME SHEET
MACHINE SHOP

Date Mar. 24 1944

| Name or Badge | Hrs | OT Hrs | Rate | | |

WAIALUA AGRIC., CO., LTD.
DAILY TIME SHEET
for MACHINE SHOP

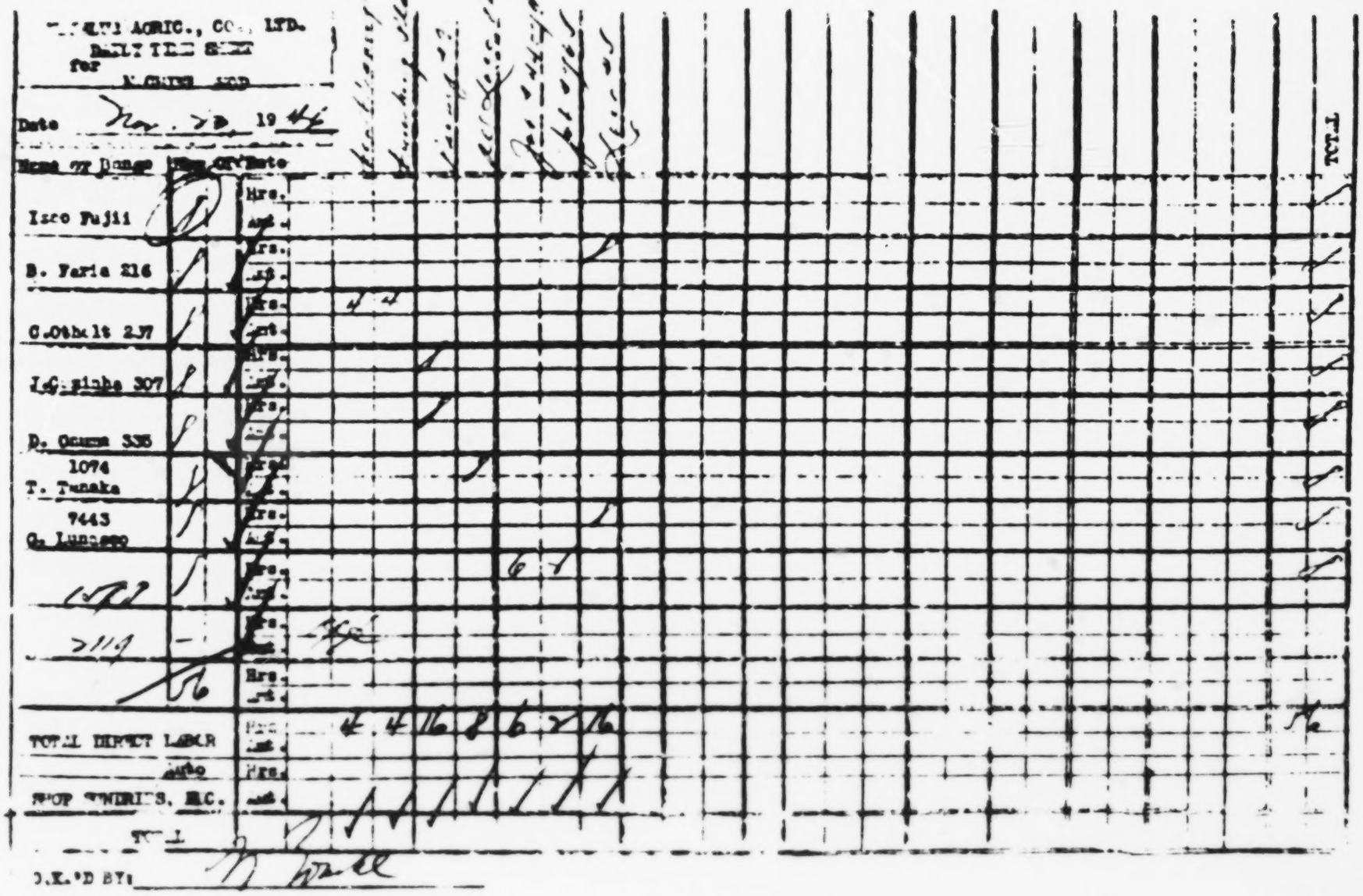
Date Nov. 23, 1944

Name or Bango	Hrs. or Amt.	Date	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	TOTAL
Isao Fujii	8	Hrs.									8
		Amt.									
B. Faria 216	8	Hrs.	8								8
		Amt.									
C. Otholt 237	8	Hrs.		8							8
		Amt.									
J. Cozinha 307	8	Hrs.			4	2				2	8
		Amt.									
D. Onuma 335	8	Hrs.		4			4				8
		Amt.									
1074 T. Tanaka	8	Hrs.			8			8			8
		Amt.									
7443 G. Lunasco	8	Hrs.	8								8
		Amt.									
1558	8	Hrs.							8		8
		Amt.									
2117	–	Hrs.	48								
		Amt.									
	56	Hrs.									
		Amt.									
TOTAL DIRECT LABOR		Hrs.	16	12	9	2	4	3	8	2	56
		Amt.									
Auto		Hrs.									
SHOP SUNDRIES, ETC.		Amt.									

O.K.'D BY: [illegible]

[illegible] AGRIC., CO., LTD.
DAILY TIME SHEET
for
MACHINE SHOP

Date Nov. 23 1946



Name of Bunge	Hrs. or Amt.	Date	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	TOTAL
Isao Fujii		Hrs.								
		Amt.								
B. Faria 216		Hrs.								
		Amt.								
C. Othelt 237		Hrs.	4	4						
		Amt.								
J. C. Sinha 307		Hrs.								
		Amt.								
D. Osuna 335		Hrs.								
		Amt.								
1074 T. Tanaka		Hrs.								
		Amt.								
7443 G. Lunasco		Hrs.								
		Amt.								
1572		Hrs.					6			
		Amt.								
2119		Hrs.								
		Amt.								
	56	Hrs.								
		Amt.								
TOTAL DIRECT LABOR		Hrs.	4	4	16	8	6	2	16	56
		Amt.								
Auto		Hrs.								
SHOP SUNDRIES, ETC.		Amt.								
TOTAL										

O.K.'D BY: [illegible]

DAILY TREE SHEET
Name of Ship
Isso Fuji
S. Furia Kis
S. Oyama 335
Y. Tsuruka
M/ Tacoma
M. Miyani
TOTAL

665

(Testimony of Raymond John O'Donnell.)

Mr. Jenks: And also I would like to offer in evidence the documents which have presently been identified as Plaintiff's Exhibit 2, for identification, and also the document which has been identified as Plaintiff's Exhibit 3, for identification.

Now, I take it there will be no objection to arranging to get photostatic copies.

Mr. Gladstein: No, on the contrary; in other words, your Honor, what Mr. Jenks is suggesting is that permission be [401] granted by the Court for him to withdraw these exhibits so he can photostat them and substitute photostats for the originals so that the Company can have a return of the originals for its own purposes, and that he will supply me with a set of photostats. Is that right?

Mr. Jenks: Yes.

The Court: You have no objection?

Mr. Gladstein: None whatever.

Mr. Jenks: These are admitted, then, in evidence?

The Court: Yes.

The Clerk: 2 will be Plaintiff's Exhibit B and 3 will be Plaintiff's Exhibit C.

The Court: A, B, and C.

(Thereupon the documents above referred to were received in evidence as Plaintiff's Exhibits B and C.)

(p.147A) [Top]

JOB CLASSIFICATION

EMPLOYER'S TIME RECORD

OCT 28 1946 NOV 24 1946

Name Quinto, Conroy Fabio 216

| | | |

Civil 787
Plaint. No. 2
For Ident. 3-30-50

(667A Lower)

United States District Court
Exhibit B
Civil 787
9-1-50

WAIALUA AGRICULTURAL COMPANY, LIMITED

EMPLOYEE'S TIME RECORD

PERIOD: FROM NOV 25 1946 TO DEC 31 1946

RATE 1.27 NAME Quinto Borney Forio BANCO 216

LEGEND
E.I.—EXCUSED ILLNESS
E.A.—EXCUSED INDUSTRIAL ACCIDENT
E.M.—EXCUSED MEDICAL ATTENTION
E.R.—EXCUSED RAIN
E.F.—EXCUSED FUNERAL
E.U.—EXCUSED UNION BUSINESS

JOB CLASSIFICATION

	Rate		25 26 27 28 29 30 1 (M T W T F S S)	Weekly Total	2 3 4 5 6 7 8 (M T W T F S S)	Weekly Total	9 10 11 12 13 14 15 (M T W T F S S)	Weekly Total	Cut Total	16 17 18 19 20 21 22 (M T W T F S S)	Weekly Total	23 24 25 26 27 28 29 (M T W T F S S)	Weekly Total	Total Hours	Total Amount
Day Work			8 8 8 – 8 8	40 5080	8 8 8 8 8 8	48 6096	8 8 8 8 8 8	48 6096	136 1727	8 8 7 8 8 4	43 5461	8 8 · 8 8 8	40 5080	8 8	[illegible]
C.T. Contract															
Marketing Contract															
Long Term Assessment															
Vacation															
Total Hours			8 8 8 – 8 8	40 5080	8 8 8 8 8 8	48 6096	8 8 8 8 8 8	48 6096	136 1727	8 8 7 8 8 4	43 5461	8 8 · 8 8 8	40 5080	8 8	[illegible]
Total Payments															
Premium Time															
C.T. Adjustments															
C.T. Retro. Loss 20															
C.T. Retro. Loss 20															
Transfer Cost: Turn-out Rate / Transfer Cost: Adjustment	26														
Operations															
1 Locomotive #3			8	8											
2 " #6			8	8	4 8 8 8 8	36	8 8 8 8 8 8	45		8 8 7 8 8 4	43	8 8 6 8 8	38	8 8	16
3 " #2			8 4	12											
4 " #4			4 4	8											
5 " #5			4	4	8	8									
6 " #7					4	4									
7 " #1															

667a

LEGEND:
E.I.—EXCUSED ILLNESS
E.A.—EXCUSED INDUSTRIAL ACCIDENT
E.M.—EXCUSED MEDICAL ATTENTION
E.R.—EXCUSED RAIN
E.F.—EXCUSED FUNERAL
E.U.—EXCUSED UNION BUSINESS
E.W.—EXCUSED NORMAL WORK DAY

WAIALUA AGRICULTURAL COMPANY, LIMITED

EMPLOYEE'S TIME RECORD

PERIOD: FROM JUN 30 1947 TO JUL 27 1947

BARNEY QUINTA FARIA 216
MILL CAMP 6 - HSE 61 C-H2-P
WAIALUA OAHU T.H. 576-05-5914
HE-J-OH 09 R 1.27 PR 1.27
25.00 1.50 1.65 RP.226

VACATION CREDIT { TURN-OUT DAYS 24 / SICKNESS & ACCIDENT

FORM WA 24-1

	RATE		30 M T W T F S S		WEEKLY TOTAL	7 M T W T F S S		WEEKLY TOTAL	14 M T W T F S S		WEEKLY TOTAL	SUB-TOTAL	21 M T W T F S S		WEEKLY TOTAL	M T W T F S S		WEEKLY TOTAL	TOTAL HOURS	TOTAL AMOUNT
DAY WORK		S.T.	8 8 8 8 . 8 .	H	40	8 8 8 8 10 8	H	50	8 8 8 8 8	H	48	138	9 8 8 8 10 10 8	H	61		H		199	253 37
				A	5080		A	6350		A	61.60	17590		A	7747		A			
				H			H	2		H	2			H	13		H			
		P.T.		A		2	A	1.27		A	.32	159	2 2 8	A	826		A		15	9
S. T. CONTRACT		S.T.		A			A			A				A			A			
				H			H			H				H			H			
		P.T.		A			A			A				A			A			
HARVESTING CONTRACT		S.T.		A			A			A				A			A			
				H			H			H				H			H			
		P.T.		A			A			A				A			A			
L. T. AGREEMENT		S.T.		A			A			A				A			A			
				H			H			H				H			H			
		P.T.		A			A			A				A			A			
VACATION		S.T.		A			A			A				A			A			
STRAIGHT TIME				H			H			H				H			H			
				A			A			A				A			A			
PREMIUM TIME				H			H			H				H			H			
				A			A			A				A			A			
O. T. ADJUSTMENT				A			A			A				A			A			
TOTAL			8 8 8 8 . 8 .	H	40	8 8 8 8 10 8 .	H	50	8 8 8 8 8 .	H	48	138	9 8 8 8 10 10 8	H	61		H		199	263 22
				A	5080		A	6477		A	61.90	17749		A	8573		A			
OPERATIONS																				

LEGEND:
E.I.—EXCUSED ILLNESS
E.A.—EXCUSED INDUSTRIAL ACCIDENT
E.M.—EXCUSED MEDICAL ATTENTION
E.R.—EXCUSED RAIN
E.F.—EXCUSED FUNERAL
E.U.—EXCUSED UNION BUSINESS
E.W.—EXCUSED NORMAL WORK DAY

WAIALUA AGRICULTURAL COMPANY, LIMITED

EMPLOYEE'S TIME RECORD

PERIOD: FROM JUL 28 1947 TO AUG 31 1947

[illegible] C-H2-P
WAIALUA OAHU T.H. 576-05-5914
HE-J-OH 09 R 1.27 PR 1.27
25.00 1.50 1.65 RP.226

VACATION CREDIT { TURN-OUT DAYS 29 / SICKNESS & ACCIDENT

FORM WA 24-1

RATE		28 29 30 31 1 2 3 M T W T F S S		WEEKLY TOTAL	4 M T W T F S S		WEEKLY TOTAL	11 12 13 14 15 16 17 M T W T F S S		WEEKLY TOTAL	SUB-TOTAL	18 M T W T F S S		WEEKLY TOTAL	25 M T W T F S S		WEEKLY TOTAL	TOTAL HOURS	TOTAL AMOUNT
[illegible]	S.T.	8 8 8 8 8 8	H	16	8 10 10 10 8 8	H	54	10 10 10 10 8 8	H	56	126	8 8 8 10 10 8	H	52	8 8 8 8 8	H	40	278	294 30
			A	2160		A	7290		A	7560	170.10		A	7020		A	5400		

United States District Court
EXHIBIT C
Case No. 787
Admitted
District of Hawaii

(p.668-Lower)

| | | |

(Testimony of Raymond John O'Donnell.)

Mr. Jenks: Is there any further questioning of Mr. O'Donnell?

Mr. Gladstein: None.

Mr. Jenks: That is all, thank you.

(Witness excused.) [402]

* * *

(Thereupon, at 12:45 p.m., September 1, 1950, the above-entitled hearing was [406] adjourned.)

* * *

Reporters' Certificate

We, Albert Grain and Lucille Hallam, Official Court Reporters, U. S. District Court, Honolulu, T. H., do hereby certity as follows: that the foregoing is a true and correct transcript of proceedings reported and transcribed by us in Civil No. 787, Waialua Agricultural Company, Ltd., Plaintiff, versus Ciraco Maneja, et al., Defendants, held in the above-named court on August 30, 31, and September 1, 1950, before the Hon. Delbert E. Metzger, Judge.

September 2, 1950.

/s/ ALBERT GRAIN,

/s/ LUCILLE HALLAM.

[Endorsed]: Filed August 6, 1951.

[Title of District Court and Cause.]

Certificate of Clerk

United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the record on appeal in the above-entitled cause consists of a statement of the names and addresses of the attorneys of record, and of the various pleadings, transcript of proceedings, exhibits, and other papers as hereinbelow listed, that all of said pleadings, transcript of proceedings, exhibits and other papers consists of original papers filed in my office and are accompanied by this certificate, and that the pages of the certified record at which said pleadings, transcript of proceedings, exhibits and other papers appear are as hereinbelow indicated: [2220]

Original Papers

	Pages of Certified Record
Order to Drop Certain Parties Defendant	2-3
Order to Drop Certain Parties Defendant and to Eliminate Class Representation Aspects	4-6
Order Setting Aside Prior Order Granting Separate Trial of Certain Issues	7-8

	Pages of Certified Record
Amended Complaint, with United States Marshal's Return	9-18
Answer to Amended Complaint, and Counter-Claim, Cross-Claim, and Cross-Complaint	19-23
Reply and Answer to Counter-Claim, Cross-Claim, and Cross-Complaint	24-28
Amendment to Answer to Amended Complaint, and Counter-Claim, Cross-Claim and Cross-Complaint	28a-31
Consent and Authorization to Become and Be a Party to Litigation	31a-31pp
Stipulation with attached Exhibits A, B, C, D, E, F, G, H, and I	32-864
Transcripts of Proceedings—August 30, 1950; August 31, 1950, and September 1, 1950, together with certificate of official court reporters	865-1277
Plaintiff's Exhibits A, B, and C	1278-1286
Defendants' Exhibits Nos. 1, 2, 3A and 3B	1287-2025
Amendment to Stipulation	2026-2031
Amendment to Amended Complaint	2032-2036
Motion to Reopen Record and Order Reopening Record	2037-2039
Second Amendment to Stipulation	2040-2043

Pages of Certified Record

Opinion and Decision of Court Containing Findings of Fact and Conclusions of Law (including the direction for entry of judgment thereon) 2044-2184

Order Granting Motion for Additional Findings 2185

Additional Findings of Fact 2186-2195

Declaratory Judgment and Judgment Awarding Defendants Overtime Compensation, Liquidated Damages, Costs, and Attorney's Fees 2196-2208

Notice of Appeal 2209

Supersedeas Bond 2210-2212

Order Extending Time to File Record on Appeal and to Docket Appeal 2213-2214

Order Extending Time to File Record on Appeal and to Docket Appeal 2215-2216

Stipulation as to Original Papers in File to Be Transmitted to Appellate Court .. 2217-2219

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 25th day of September, 1951.

[Seal] /s/ WM. F. THOMPSON, JR.,

Clerk, United States District Court, District of Hawaii. [2222]

[Endorsed]: No. 13114. United States Court of Appeals for the Ninth Circuit. Waialua Agricultural Company, Limited, a Corporation, Appellant, vs. Ciraco Maneja, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed September 27, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13114

WAIALUA AGRICULTURAL COMPANY, LIMITED,

Appellant,

vs.

CIRACO MANEJA, et al.,

Appellees.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY

The appellant intends to rely upon the following points in its appeal herein:

I.

Definitions of Terms Herein.

The word "week" as used herein refers to the

particular appellee's work week, and each work week is identified by the date on which it commenced. All references to the months of November and December refer to those months in the year 1946, and all references to the months of January to September, inclusive, refer to such months in the year 1947. The "exemption of Section 13(a) (6)" means the exemption from Section 7(a) of the Fair Labor Standards Act of 1938 (hereinafter called the Act), provided by Section 13(a) (6) thereof. The "exemption of Section 7(c)" means the exemption from said Section 7(a) provided by Section 7(c) of the Act. The "exemption of Section 13(a) (2)" means the exemption from said Section 7(a) provided by Section 13(a) (2) of the Act.

The abbreviation "Op." as used herein refers to the Opinion and Decision of Court Containing Findings of Fact and Conclusions of Law, filed in the District Court on May 3, 1951, and appearing in the original Certified Record at pages 2044-2184. The abbreviation "J." as used herein refers to the Declaratory Judgment and Judgment Awarding Defendants Overtime Compensation, Liquidated Damages, Costs and Attorney's Fees, filed in the District Court on June 13, 1951, and appearing in the original Certified Record at pages 2196-2208. The abbreviation "C. R." as used herein refers to the original Certified Record.

II.

The District Court erred in holding as follows:

1. That each and every appellee was engaged in commerce or in the production of goods for commerce within the meaning of Section 7(a) of the Act in each week during the period from November 20, 1946, to and including, September 14, 1947. (J. page 1; C. R. page 2197.)

2. That appellee Ciraco Maneja did not come within the exemption of Section 13(a) (6) in each of the following weeks: January 13, 27; March 3, 10. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 9, 16; January 6; February 10, 24; May 12. (J. page 2; C. R. page 2198.)

3. That appellee Cornelio Asuncion did not come within the exemption of Section 13(a) (6) in each of the following weeks: January 13, 20, 27. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 9; February 10, 17; March 3, 17; May 5, 12, 19. (J. page 2; C. R. page 2198.)

4. That appellee Tsuruo Hayashi did not come within the exemption of Section 13(a) (6) in each of the following weeks: January 6; February 10. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption

of Section 7(c) in each of the following weeks: December 2, 16; January 13, 20, 27; February 3, 24; March 10; April 7; May 19. (J. page 2; C. R. page 2198.)

5. That appellee Koichi Okouchi did not come within the exemption of Section 13(a) (6) in each of the following weeks: January 13, 20, 27. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6; February 3, 10, 17, 24; March 10, 17, 24; April 7, 21; May 12, 19; June 9. (J. page 3; C. R. page 2199.)

6. That appellee Tadao Watanabe did not come within the exemption of Section 13(a) (6) in each of the following weeks: December 9, 16; March 3, 17; April 21; May 12, 19. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: January 6, 13, 20, 27; February 3, 17, 24; March 10; April 7, 28; July 21; September 8. (J. page 3; C. R. page 2199.)

7. That appellee Peter Holmberg did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9; February 10, 16, 23; March 3, 17, 23; April 21, 27; May 4, 12; June 8, 16; July 6, 13, 21; August 4, 17; September 8. (J. page 3; C. R. page 2199.)

8. That appellee Barney Faria did not come

within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8. (J. page 4; C. R. page 2200.)

9. That appellee Hatsusuke Sera did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 14, 21, 28; May 5, 12, 19; June 2, 9, 16; July 21, 28; August 4, 11, 18; September 8. (J. page 4; C. R. page 2200.)

10. That appellee Takumi Okouchi did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 13, 20, 27; February 3, 10, 17, 24; March 2, 10, 24; April 7, 14, 20, 28; May 4, 12, 18; June 1, 9, 15, 23; July 7, 13, 21, 27; August 4, 10, 18, 24; September 7. (J. page 4; C. R. page 2200.)

11. That appellee Bernabe Hernandez did not come within the exemption of Section 13(a) (6) in each of the following weeks: December 1, 8; February 10, 16, 23; March 3, 9, 16, 24; April 6, 14, 20, 27; May 4, 18; June 16, 22; July 7, 20, 28; August 3, 10, 18; September 8. And that said appellee did not come within the exemption of Sec-

tion 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: January 13, 20, 27; February 3. (J. page 4; C. R. page 2200.)

12. That appellee Pedro Dumlao did not come within the exemption of Section 13(a) (6) in each of the following weeks: December 8, 15; February 9, 17, 23; March 2, 10, 16, 23; April 6, 13, 20, 27; May 4, 12, 18; June 2, 8, 15, 22; July 6, 13, 20, 27; August 3, 10, 17; September 7. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: January 13, 20, 27; February 3. (J. pages 4-5; C. R. pages 2200-2201.)

13. That appellee Ushinosuke Kondo did not come within the exemption of Section 13(a) (6) in each of the following weeks: December 1, 8; February 10, 23; March 3, 9, 16, 24; April 6, 14, 20, 27; May 5, 11, 18; June 1, 8, 16, 22; July 7, 13, 20, 28; August 3, 10, 18; September 8. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: January 6, 20, 27; February 3. (J. page 5; C. R. page 2201.)

14. That appellee Simon Cumlat did not come within the exemption of Section 13(a) (6) in each of the following weeks: December 2, 8, 15; February 10, 16; March 3, 10, 16; April 6, 14, 20, 27; May 5, 11, 18; June 1, 8, 16, 22; July 13, 20, 28; August 3, 10, 18; September 8. And that said appellee did not come within the exemption of Section

13(a) (6) or the exemption of Section 7(c) in each of the following weeks: January 6, 13, 20, 27; February 3. (J. page 5; C. R. page 2201.)

15. That appellee Apolonio Lazo did not come within the exemption of Section 13(a) (6) in each of the following weeks: December 8, 16; February 9, 16, 24; March 9, 17, 23; April 7, 13, 20, 28; May 4, 11, 19; June 1, 15, 22; July 13, 21, 27; August 3, 11, 17; September 7. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: January 6, 13, 20; February 3. (J. page 5; C. R. page 2201.)

16. That appellee Teruichi Kubo did not come within the exemption of Section 13(a) (6) in each of the following weeks: December 1, 8, 15; February 9, 17, 23; March 2, 10, 16, 23; April 6, 13, 21, 27; May 4, 12, 18; June 2, 8, 15, 23; July 6, 14, 20, 27; August 4, 10, 17; September 7. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: January 6, 13, 20, 27; February 3. (J. page 6; C. R. page 2202.)

17. That appellee Giichi Hamamoto did not come within the exemption of Section 13(a) (6) in each of the following weeks: February 10, 16, 24; March 2, 9, 17, 24; April 6, 14, 20, 28; May 5, 11, 19; June 1, 9, 16, 22; July 7, 13, 21, 28; August 3, 11, 18; September 8. And that said appellee did not come within the exemption of Section 13(a) (6) or

the exemption of Section 7(c) in each of the following weeks: January 13, 20, 27; February 3. (J. page 6; C. R. page 2202.)

18. That appellee Masaiki Oato did not come within the exemption of Section 13(a) (6) in each of the following weeks: December 1, 9; February 9, 17; April 21, 28; May 5. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: January 6, 13, 20, 27; February 24; March 2, 9, 17, 24; April 6, 14; May 12; June 2, 9, 16, 23; July 14, 21, 28; August 4, 11, 18; September 8. (J. page 6; C. R. page 2202.)

19. That appellee Dionicio Carrit did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 1, 8; January 6, 13, 20, 27; February 3, 9, 16; March 2, 9, 16, 23; April 6, 13, 20, 27; May 4, 11, 18; June 1, 8, 15, 22; July 13, 20, 27; August 3, 10, 17; September 7. (J. pages 6-7; C. R. pages 2202-2203.)

20. That appellee Seraphine Robello did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 1, 8, 15; January 6, 13, 20, 27; February 3, 10, 16, 23; March 24; April 6, 14, 20, 27; May 4, 11, 19; June 1, 8, 16, 22; July 7, 20; August 3, 10, 18; September 8. (J. page 7; C. R. page 2203.)

21. That appellee Damaso Claunan did not come

within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 20, 27; February 10, 17, 24; March 3, 10, 17, 24; April 21; May 5, 19; June 9, 16, 23; July 7, 14, 28; August 4, 11; September 8. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) or the exemption of Section 13(a) (2) in each of the following weeks: January 13; April 28. (J. Pages 7, 11; C. R. pages 2203, 2207.)

22. That appellee Fumio Sunahara did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) or the exemption of Section 13(a) (2) in the week of March 3. (J. pages 7, 11; C. R. pages 2203, 2207.)

23. That appellee Toshio Tanaka did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2; January 6, 13, 20, 27; February 3, 10, 17; March 3, 10, 17, 24; April 7, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21; August 11, 18; September 8. (J. page 7; C. R. page 2203.)

24. That appellee Masaru Ezawa did not come within the exemption of Section 13(a) (6) in each of the following weeks: December 16; January 13, 27; February 3; May 12, 19. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9; January 6, 20; February 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 28; May 5; June 2, 9, 16, 23; July 7, 21, 28; August 4, 11, 18; September 8. (J. page 7; C. R. page 2203.)

25. That appellee Domingo Guigui did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 8, 16; January 13, 19, 27; February 2, 10, 16, 24; March 9, 17, 23; April 7, 13, 20, 28; May 4, 11, 19; June 1, 9, 15; July 6, 13, 21, 27; August 3, 11, 17; September 7. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) or the exemption of Section 13(a) (2) in the week of January 5. (J. pages 8, 11; C. R. pages 2204, 2207.)

26. That appellee Alfred Reyher did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8. (J. page 8; C. R. page 2204.)

27. That appellee Hirosaku Takata did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8. (J. page 8; C. R. page 2204.)

28. That appellee Antone Vierra did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8. (J. page 8; C. R. page 2204.)

29. That appellee Jiro Sakai did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8. (J. page 8; C. R. page 2204.)

30. That appellee Yukishige Tsutsui did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 17, 24; March 3, 10, 17, 24; April 21, 28; May 5, 12, 19; June 2, 9, 16, 23;

July 7, 14, 21, 28; August 4, 11, 18; September 8. (J. pages 8-9; C. R. pages 2204-2205.)

31. That appellee Toshio Kashiwabara did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2; January 6, 13, 20; February 3, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 9, 16, 23; July 7, 14, 21; August 4; September 8. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) or the exemption of Section 13(a) (2) in each of the following weeks: January 27; February 10; July 28. (J. page 9; C. R. page 2205.)

32. That appellee Edwin Mori did not come within the exemption of Section 13(a) 6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16; July 14, 21, 28; August 4, 11, 18; September 8 (J. page 9; C. R. page 2205.)

33. That appellee Genjiro Hironaka did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21; May 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 18. (J. page 9; C. R. page 2205.)

34. That appellee Antone Robello did not come within the exemption of Section 13(a) (6) in each

of the following weeks: April 14; July 28. And that said appellee did not com within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9; January 6, 13, 20, 27; February 3, 10, 24; March 3, 10, 17; April 7, 21, 28; May 5; June 2, 16, 23; July 7, 14, 21; August 18. (J. page 9; C. R. page 2205.)

35. That appellee Yoshiji Yamada did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9; January 6, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24. (J. page 9; C. R. page 2205.)

36. That appellee Roque Crisostomo did not come within the exemption of Section 13(a) (6) in each of the following weeks: April 7; May 12; July 28. And that said appellee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 14, 21, 28; May 5, 19; June 2, 16, 23; July 7, 14, 21; August 4, 11, 18; September 8. (J. page 10; C. R. page 2206.)

37. That appellee Moses Fernandez did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 16; January 20; February 17, 24; March 10, 17; April 14, 21; May 12, 19; June 16. (J. page 10; C. R. page 2206.)

38. That appellee Yack Chun Lee did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8. (J. page 10; C. R. page 2206.)

39. That appellee Louis Pacheco did not come within the exemption of Section 13(a) (6) in each of the following weeks: November 18; December 2, 9, 16; January 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4, 11, 18; September 8. (J. page 10; C. R. page 2206.)

40. That appellee Eiko Sakaguchi did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: April 28; June 23; July 7. (J. page 10; C. R. page 2206.)

41. That appellee Margaret Fujiwara did not come within the exemption of Section 13(a) (6) or the exemption of Section 7(c) in each of the following weeks: December 2, 9, 16; January 6, 13, 20, 27; February 3, 10, 17, 24; March 3, 10, 17, 24; April 7, 14, 21, 28; May 5, 12, 19; June 2, 9, 16, 23; July 7, 14, 21, 28; August 4; September 8. (J. page 10; C. R. page 2206.)

III.

The District Court erred in failing to hold with respect to the weeks affected by the controversy in this action that an employee appellee was exempt from Section 7(a) of the Act during any week in which

(a) he performed work, some of which was exempt from Section 7(a) under one provision of the Act and the remainder of which was exempt from Section 7(a) under another provision or other provisions of the Act, or

(b) he performed work, some of which was not "in commerce or in the production of goods for commerce" within the meaning of Section 7(a) and the remainder of which was exempt from Section 7(a) by any provision or provisions of the Act.

IV.

The District Court erred in failing to hold with respect to the weeks affected by the controversy in this action that any appellee employee, who in a week performed some work which was exempt from Section 7(a) of the Act and did not engage for a substantial part of his time in the same week in an activity which was not so exempt, was exempt during such week from Section 7(a).

V.

The District Court erred in awarding any overtime compensation, liquidated damages, costs, and attorneys' fees to appellees or any of them. (J. pages 11-12; C. R. pages 2207-2208.)

VI.

The District Court erred in admitting, relying upon and crediting defendants' Exhibits 2, 3A and 3B, which were incompetent, irrelevant, and immaterial.

VII.

The District Court clearly erred in making findings of fact which are in conflict with the Stipulation of Facts submitted by the parties and are not supported by competent and substantial evidence, oral or documentary, introduced at the trial in the District Court. Said clearly erroneous findings are:

1. Finding that appellant's business consists of "(a) growing, cultivating and harvesting sugar cane on the lands owned or leased by it; (b) operating a system of railroad transportation over which harvested cane is hauled to [appellant's] mill; (c) processing such cane into raw sugar and molasses at the mill; (d) shipping such raw sugar to a refinery situated in the continental United States, where such raw sugar is refined and subsequently sold; (e) shipping molasses in bulk to the continental United States (f) operating a series of shops for the purpose of maintaining, repairing and overhauling [appellant's] buildings, machinery, equipment, vehicles, and rolling stock; (g) maintaining mill villages and housing in which [appellant's] employees and their families dwell."
(Op. page 4; C. R. page 2048.)

2. Finding that appellant does not "directly" engage in any sugar refining operation, the record showing clearly that appellant does not engage in any sugar refining operation directly or indirectly. (Op. page 4; C. R. page 2048.)

3. Finding that sugar cane "cannot be stored more than two or three days without spoiling." (Op. page 6; C. R. page 2050.)

4. Finding that "operational problems on a sugar plantation are comparable to those of a Detroit factory rather than to those of a large Iowa farm." (Op. page 7; C. R. page 2051.)

5. Finding that appellant's railroad system was valued at more than three-fourths of a million dollars and that the investment in such system amounted to nearly a million dollars. (Op. pages 8, 43; C. R. pages 2052, 2086.)

6. Finding that the main line railroad of appellant is used to haul sugar cane from points where cane cars have been "concentrated" to the mill and that the point of such concentration is the point where the main line tract is joined by the portable tract. (Op. pages 10, 41, 46; C. R. pages 2054, 1084, 2088.)

7. Finding that bagasse in appellant's mill serves as an economical source of fuel for the production of power, without adding that the production of such power is required for use in performing the mill's processing operations. (Op. page 14; C. R. page 2057.)

8. Finding that power generated and purchased by appellant is distributed to all the various operations on the appellant's plantation. (Op. page 15; C. R. page 2058.)

9. Finding that appellant employs 24 employees who work at appellant's garage. (Op. page 20; C. R. page 2063.)

10. Finding that appellant undertook to create a community at its plantation in order to establish a stable labor supply and to house it at places convenient to appellant's purpose. (Op. page 28; C. R. page 2071.)

11. Finding that

> "It must be remembered that the whole plantation area, including the town, is owned by the plantation company, and although there are frequently many shops, such as drug stores, tailor shops, shoemaker shops and the like, that are privately operated, they rent their sites from the plantation and can remain only as long as the plantation permits them to do so. Anyone on any part of the plantation is a trespasser unless he has the permission of the management to be there. * * *" (Op. page 29; C. R. page 2072

12. Finding that the relationship between an individual's employment with appellant and his occupation of a "company-owned" house is shown in the tabulation contained in the District Court's Opinion. (Op. pages 31-32; C. R. pages 2074-2075.)

13. Finding that under its collective bargaining

agreement appellant "expressly undertakes to provide dwelling maintenance and repairs, and village services." (Op. pages 32, 60; C. R. Pages 2075, 2103.)

14. Finding that the existence of an organization such as the Hawaiian Sugar Planters Association and the existence of the factor system in Hawaii, together with the way such factor system operates, as well as many other aspects of appellant's operations, are unique to the Territory of Hawaii. (Op. pages 34, 38; C. R. pages 2077, 2081.)

15. Finding that employees in appellant's village facilities department repaired, maintained, and serviced the dwellings located in appellant's villages and occupied by appellant's employees, when in fact such dwellings were also occupied by non-employees of appellant. (Op. page 37; C. R. page 2080.)

16. Finding that, with the exception of a few years, appellant's plantation has been quite profitable to its agents and shareholders. (Op. page 37; C. R. page 2080.)

17. Finding that appellant's activities constituted a number of separate and distinct enterprises which taken together constitute a hybrid type of business, and that in the conduct of such enterprises appellant has assumed a variety of functions, including those of farmer, carrier, manufacturer, shipper and operator of village communities. (Op. pages 38, 45; C. R. pages 2081, 2088.)

18. Finding that appellant does not dispute that

its employees, who are engaged in activities in connection with the appellant's retail store, are engaged in commerce or in the production of goods for commerce within the meaning of the Act. (Op. page 38; C. R. page 2081.)

19. Finding that since 1943, during the off season, overtime has been paid by appellant for hours in excess of 40 per week to all its mill and shop employees. (Op. page 40; C. R. page 2083.)

20. Finding that some appellee employees assemble the appellant's harvested crop at "centralized" points on appellant's main line railroad to commence transportation to the mill. (Op. page 41; C. R. page 2084.)

21. Finding that appellant's cane cars are concentrated upon the appellant's main line railroad, "for transport, through intermediate processing, to the sugar refinery." (Op. page 41; C. R. page 2084.)

22. Finding that the agricultural aspect of appellant's operations terminates "with the concentration of cars loaded with cane, upon the main line railroad operated by [appellant], for transport, through intermediate processing, to the sugar refinery." (Op. page 41; C. R. page 2084.)

23. Finding that appellant's train crews are not engaged in "any act of producing sugar cane, or in any act incidental to or conjoint with the production of sugar cane; nor in processing cane into

sugar at the mill, where the processing occurs." (Op. page 42; C. R. page 2085.)

24. Finding that it is immaterial to the determination of the applicability of the Section 13(a)(6) or Section 7(c) exemptions in the Act, that the train crews are employed by the same company which employs the farm hands and the processing crews. (Op. page 42; C. R. page 2084.)

25. Finding that

> "Railroad operation is a systematic business calling for the employment of skilled, experienced men, trained to quick, keen perception (not farmhands or mill hands) for handling locomotives and moving cars (not the goods in transit), and for the maintenance of roadbed, track and structures, and roundhouse care and servicing of locomotives—all specialized technical work. Railroading is not farming or processing, nor intended by the Act to be a part of either." (Op. page 43; C. R. page 2086.)

26. Finding that

> "It is notorious that in years past some sugar plantations in Hawaii hired a common carrier utility company, whether from economy or lack of capital, to install a railroad system, to perform the work of hauling cane from fields to mill yards." (Op. page 43; C. R. page 2086.)

27. Finding that appellant has not treated its railroad employees as within the exemption of Sec-

tion 13(a)(6), for "during off season these employees have been paid overtime after 40 hours of work." (Op. page 44; C. R. page 2087.)

28. Finding that

> "The activities of the [appellant's] railroad crew, and of those employed in activities relating to maintenance, upkeep and operation of the main line railroad system, occur subsequently to and independently of the [appellant's] farming activities, albeit coordinated thereto." (Op. page 44; C. R. page 2087.)

29. Finding that appellant distinguishes on its records of operating costs between harvesting and main line transportation without further finding that appellant similarly distinguishes on such records between harvesting and field transportation. (Op. page 44; C. R. page 2087.)

30. Finding that in the maintenance of its records, appellant separates field activities from transportation at the point where cane cars are placed on the main line railroad. (Op. page 45; C. R. page 2088.)

31. Finding that

> "Hauling cane on the [appellant's] main line railroad is not a part of harvesting operations, since the gathering of the crop is completed on the fields on which it is grown prior to transportation; and such transportation constitutes neither a storing of such crops, nor transportation either to storage or market." (Op. page 45; C. R. page 2088.)

32. Finding that appellant's permanent main line transportation is not located on a farm. (Op. page 45; C. R. page 2088.)

33. Finding that land is set aside on appellant's plantation exclusively for railroad purposes. (Op. page 46; C. R. page 2089.)

34. Finding that appellant's mill operations are so conducted as to assume the character of a distinct business enterprise of an industrial nature. (Op. page 46; C. R. page 2089.)

35. Finding that appellant's mill operation is not a subordinate part of farming and that it constitutes a large operation that follows the pattern of the industry in Hawaii. (Op. page 47; C. R. page 2090.)

36. Finding that appellant employs a separate work force for the processing operation in the mill and that such work force does no work in the fields. (Op. page 47; C. R. page 2090.)

37. Finding that the work force in appellant's mill is paid in accordance with a scale of hourly rates "which are different and distinct from the system used, partly at contract rates and partly at hourly rates, to pay farm labor." (Op. page 47; C. R. page 2090.)

38. Finding that the activities of appellant's employees performed in connection with bagasse and the generation of electricity are not a part of

appellant's processing operations. (Op. page 48; C. R. page 2091.)

39. Finding that appellant's off-season operation preserves and enhances its capital investment. (Op. page 50; C. R. page 2093.)

40. Finding that appellant's repair and service shop employees perform no work "of an agricultural nature, or at a time or place conjoint with or incidental to the farming process, or on a 'farm' " as that term is used in the Act. (Op. pages 51-52; C. R. pages 2094-2095.)

41. Finding that appellant "has never treated repair shop employees as falling under the agricultural exemption" and has paid all such employees overtime for hours of work in excess of 40 per week during the off-season. (Op. page 52; C. R. page 2095.)

42. Finding that the work of appellant's repair shop employees is "not that of engaging in processing, or in any part of processing, nor is their work so integrated with processing as to be a portion thereof, incapable of segregation." (Op. page 52; C. R. page 2095.)

43. Finding that

> "Repair shop employees are not occupationally attached to the mill. The headquarters out of which they work is in each instance a separate structure, in which they generally perform the major portion of their work, to which they

regularly report each day, and in which they receive supervision and instructions." (Op. page 52; C. R. page 2095.)

44. Finding that when occasion requires appellant's repair shop employees to be elsewhere than in their shops, "they perform services for every operation on the plantation, not the mill exclusively." (Op. pages 52-53; C. R. pages 2095-2096.)

45. Finding that most of the appellant's repair shop employees "do not generally perform work inside the mill building, except during off-season, when processing is suspended." (Op. page 53; C. R. page 2096.)

46. Finding that there "is no interchange shown, during the grinding season, of personnel, equipment, or materials between the mill and the repair shops." (Op. page 53; C. R. page 2096.)

47. Finding that the repair shops constitute and are "self-sufficient units, operated not as an incident to any other operation, exclusively or dominantly, but rather as an integral part of the overall combination of separate enterprises jointly conducted by [appellant]." (Op. page 53; C. R. page 2096.)

48. Finding that existing conditions are such that it has been necessary for appellant to furnish housing and community services to its production employees. (Op. page 59; C. R. page 2102.)

49. Finding that the appellant's villages "are located both in isolation and insulation from the

rest of the Territory; [that] these villages are located upon [appellant's] lands, and are many miles from any city." (Op. page 59; C. R. page 2102.)

50. Finding that "no other housing in adequate quantity, except that provided by [appellant], is shown to be available to [appellant's] employees." (Op. page 59; C. R. page 2102.)

51. Finding that "historically [appellant] constructed [its dwelling] houses and established [its] villages for the purpose of supplying necessary dwellings for a stable labor pool which [appellant] desired to be in close proximity to its operations." (Op. pages 59-60; C. R. pages 2102-2103.)

52. Finding that the maintenance of village facilities and dwelling repairs were carried on by appellant "as a part of its over-all production operations, not as a matter of mere convenience for its employees." (Op. page 60; C. R. page 2103.)

53. Finding that

> "Many of the employees of [appellant] who work on dwellings, and in connection with village facilities, are a part of [appellant's] production operations, being attached to various of the repair shops, such as the carpenter, plumbing and paint shops, which perform activities for the mill, in regard to production machinery and equipment, and for administration and office buildings." (Op. page 60; C. R. page 2103.)

54. Finding that rental by appellant of houses on its plantation to non-employees is negligible. (Op. page 60; C. R. page 2103.)

55. Finding that "doubtless the present availability of housing for rental to outsiders is related to the continuing mechanization of [appellant's] operations which naturally decreases the number of employees needed." (Op. page 60; C. R. page 2103.)

56. Finding that after the 1946 conversion of housing and facilities into cash values, the employee paid back to the appellant the same amount as rental. (Op. pages 60-61; C. R. pages 2103-2104.)

57. Finding that "the operation and conduct of village facilities and housing are historically and presently an integral part of [appellant's] production effort." (Op. page 61; C. R. page 2104.)

58. Finding that

> "In origin and history, Waialua village was and remains a mill village, company-owned and company-controlled, in every sense of that term. The same is true of the smaller villages on [appellant's] plantation where its employees occupy company-owned dwellings. All these villages, and all of the buildings, houses, and other facilities existing therein, were created by [appellant] for the purpose of providing housing and community services for a stable supply of labor." (Op. page 63; C. R. page 2106.)

59. Finding that the opportunity to occupy or use any portion of appellant's villages, their facilities, and the dwelling houses therein, has always rested exclusively with the appellant and that ingress and egress are subject to the appellant's control. (Op. page 63; C. R. page 2106.)

60. Finding that

"While [appellant's] employees are not required under the collective bargaining agreement to live in company-owned houses, there is no evidence that they have any real choice over the matter. The possibility of purchasing homes of their own seems to be a remote and rare occurence; the unique system of semi-feudal land tenure plays a role. Only to an inconsequential extent is it possible for employees to rent, at suitable locations near to their places of work, houses owned by anyone other than [appellant]. It cannot be assumed to be accidental that, of 959 non-supervisory persons employed by the company, in the period to which this suit relates, only 16 lived in houses other than those owned by [appellant]." (Op. page 63; C. R. page 2106.)

61. Finding that

"The work done by [appellant's] employees in maintaining and keeping in proper condition the housing occupied by its production workers, is neither trivial nor insignificant to [appellant's] business of producing sugar. It represents a material contribution to [appel-

lant's] production of sugar. Without the performance of such repair and maintenance work, [appellant's] housing and village facilities would fall into disrepair. Its employees would be unable to continue to occupy them, and there would be marked interference and damage to the continuation of production of goods for commerce." (Op. pages 63-64; C. R. pages 2106-2107.)

62. Finding that

"The close relationship between the maintenance of the mill villages and the production of cane and manufacture of sugar, is exemplified by the fact that mill village maintenance employees, such as carpenters, painters and plumbers, perform their work indiscriminately both on the buildings and facilities used by [appellant] to conduct its production operations, and on the dwelling houses." (Op. page 64; C. R. page 2107.)

63. Finding that the plumbing shop and paint shop of appellant have personnel comprising intact groups who perform necessary work both on appellant's production buildings and its housing. (Op. page 64; C. R. page 2107.)

64. Finding that in the case of carpenters, all are attached to the carpenter shop, "without segregation between village carpenters and industrial carpenters, except as to timekeeping." (Op. page 64; C. R. page 2107.)

65. Finding that the carpenters, painters, plumbers, and others working in connection with appellant's villages were covered by the Act "because they contributed to 'the maintenance of a safe, habitable building' * * * which was, in turn necessary to house, maintain, and keep in desired proximity to [appellant's] operations, employees whose work involved them directly in the production of goods for commerce." (Op. page 65; C. R., page 2108.)

66. Finding that as a general rule the engagement by appellees in non-exempt activities was substantial; and that even in those instances where such engagement was small in amount, it was regular and recurring. (Op. page 66; C. R., page 2109.)

67. Finding that the instances where a small amount of non-exempt work was performed by an appellee in a week, which otherwise would be exempt, are few and scattered and do not present a consistent or recurring pattern. (Op. page 67; C. R., page 2110.)

68. Finding that at times certain of the appellees attached to appellant's field operations department performed non-agricultural activities. (Op. page 71; C. R., page 2114.)

69. Finding that in the case of appellee Maneja the following weeks present no issue: January 6, 13. (Op. page 71; C. R., page 2114.)

70. Finding that the amount unpaid and due

appellee Maneja is $30.94. (Op. page 73; C. R., page 2116.)

71. Finding that the amount unpaid and due appellee Asuncion is $47.41. (Op. page 74; C. R., page 2117.)

72. Finding that in each of the weeks February 24, March 10, and May 19 the work of appellee Hayashi consisted "principally" of repairing cane-loading machine No. 306. (Op. page 75; C. R., page 2118.)

73. Finding that the amount unpaid and due appellee Hayashi is $44.88. (Op. page 75; C. R., page 2118.)

74. Finding that the amount unpaid and due appellee Koichi Okouchi is $77.02. (Op. page 77; C. R., page 2120.)

75. Finding that in the case of appellee Watanabe the week of January 6 presents no issue. (Op. page 77; C. R., page 2120.)

76. Finding that the amount unpaid and due appellee Watanabe is $71.50. (Op. page 79; C. R., page 2122.)

77. Finding that during the off-season one day shift and one night shift were worked by appellant's locomotive engineers. (Op page 80; C. R., page 2123.)

78. Finding that appellee Holmberg was switched from one shift to another during both

the grinding and off-seasons. (Op. page 80; C. R., page 2123.)

79. Finding that the amount unpaid and due appellee Holmberg is $100.93. (Op. page 81; C. R., page 2124.)

80. Finding that the amount unpaid and due appellee Faria is $144.91. (Op. page 82; C. R., page 2125.)

81. Finding that appellee Sera was put to work cleaning a plantation reservoir for only a few hours. (Op. page 82; C. R., page 2125.)

82. Finding that in the following weeks appellee Sera "repaired" derailed locomotives and cars: December 2, 9, 16; January 13, 20, 27; February 3, 10; March 3, 10, 17, 24; April 14; May 5, 12, 19; June 2, 9, 16; July 28; August 4, 11 18; September 8. (Op. pages 82-83; C. R., pages 2125-2126.)

83. Finding that the amount unpaid and due appellee Sera is $97.97. (Op. page 83; C. R., page 2126.)

84. Finding that in the case of appellee Takumi Okouchi the week of February 3 presents no issue. (Op. page 83; C. R., page 2126.)

85. Finding that the amount unpaid and due appellee Takumi Okouchi is $98.04. (Op. page 84; C. R., page 2127.)

86. Finding that certain of the appellees were factory workers. (Op. page 84; C. R. page 2127.)

87. Finding that certain of the appellees worked in the mill "but not in the operation of processing machinery." (Op. page 84; C. R., page 2127.)

88. Finding that appellee Oato received overtime pay as a requirement of the Act in each of the following weeks: January 6, 13, 20, and 27. (Op. page 85; C. R. page 2128.)

89. Finding that the amount unpaid and due appellee Oato is $73.78. (Op. page 86½; C. R., page 2130.)

90. Finding that the activities of appellee Carrit "related partially to the mill operation, but also in large measure and substantial part to the production of power, the generation of electricity for operations throughout the plantation and the handling of bagasse, an operation separate and apart from sugar processing operations." (Op. pages 86½-87; C. R., pages 2130-2131.)

91. Finding that appellee Carrit received overtime pay as a requirement of the Act in each of the following weeks: January 6, 13, 20, 27; February 3. (Op. page 87; C. R., page 2131.)

92. Finding that the amount unpaid and due appellee Carrit is $87.68. (Op. page 87; C. R. page 2131.)

93. Finding that the air compressors over which appellee Seraphine Robello had charge furnished

compressed air which was used "throughout the plantation." (Op. page 88; C. R. page 2132.)

94. Finding that appellee Seraphine Robello received overtime pay as a requirement of the Act in each of the following weeks: January 6, 13, 20, 27; February 3. (Op. page 88; C. R., page 2132.)

95. Finding that the amount unpaid and due appellee Seraphine Robello is $144.80. (Op. page 89; C. R., page 2133.)

96. Finding that the appellees Guigui, Vierra, and Tsutsui were attached to one or another of appellant's service shops. (Op. pages 89, 98, 105, 110; C. R., pages 2133, 2142, 2149, 2154.)

97. Finding that appellee Claunan serviced and repaired caneloading machines in the fields only "to a minor extent." (Op. page 89; C. R., page 2133.)

98. Finding that the amount unpaid and due appellee Claunan is $125.96. (Op. page 91; C. R., page 2135.)

99. Finding that all of appellee Sunahara's time was spent in welding repairs and construction. (Op. page 91; C. R., page 2135.)

100. Finding that the amount unpaid and due appellee Sunahara is $143.34. (Op. page 93; C. R., page 2137.)

101. Finding that the amount unpaid and due appellee Tanaka is $111.04. (Op. page 95; C. R., page 2139.)

102. Finding that the amount unpaid and due appellee Ezawa is $163.96. (Op. page 98; C. R., page 2142.)

103. Finding that the amount unpaid and due appellee Guigui is $123.82. (Op. page 100; C. R., page 2144.)

104. Finding that the amount unpaid and due appellee Reyher is $174.12. (Op. page 103; C. R., page 2147.)

105. Finding that the amount unpaid and due appellee Takata is $136.02. (Op. page 105; C. R., page 2149.)

106. Finding that the principal task of appellee Vierra was to haul labor and to haul crushed rock. (Op. page 105; C. R., page 2149.)

107. Finding that appellee Vierra hauled labor from "assembly points" in villages. (Op. page 105; C.R., page 2149.)

108. Finding that all the crushed rock hauled by appellee Vierra was delivered to appellant's concrete products plant. (Op. page 105; C. R., page 2149.)

109. Finding that the amount unpaid and due appellee Vierra is $127.89. (Op. page 109; C. R., page 2153.)

110. Finding that the amount unpaid and due appellee Sakai is $133.12. (Op. page 110; C. R., page 2154.)

111. Finding that appellee Tsutsui produced footings and a variety of other concrete products used as part of the irrigation system of the plantation "and for other purposes." (Op. page 110; C. R., page 2154.)

112. Finding that the amount unpaid and due appellee Tsutsui is $154.94. (Op. page 111; C. R., page 2155.)

113. Finding that appellee Kashiwabara repaired water lines used to supply water to dwellings occupied by appellant's employees, when in fact such water lines supplied water only to dwellings and places of business of persons other than appellant's employees. (Op. page 111; C. R., page 2155.)

114. Finding that the amount unpaid and due appellee Kashiwabara is $145.67. (Op. page 113; C. R., page 2157.)

115. Finding that the amount unpaid and due appellee Mori is $127.92. (Op. page 115; C. R., page 2159.)

116. Finding that the amount unpaid and due appellee Hironaka is $132.84. (Op. page 119; C. R., page 2163.)

117. Finding that appellee Antone Robello was employed at appellant's garage. (Op. page 119; C. R., page 2163.)

118. Finding that the amount unpaid and due appellee Antone Robello is $85.40. (Op. page 120; C. R., page 2164.)

119. Finding that in the case of appellee Yamada the week of January 27 presents no issue. (Op. page 121; C. R. page 2165.)

120. Finding that the amount unpaid and due appellee Yamada is $58.10. (Op. page 122; C. R., page 2166.)

121. Finding that the amount unpaid and due appellee Crisostomo is $137.54. (Op. page 125; C. R., page 2169.)

122. Finding that the amount unpaid and due appellee Fernandez is $28.88. (Op. page 126; C. R., page 2170.)

123. Finding that

> "This [appellee's] work was necessary for, and closely related to, [appellant's] production operations. Nothing, however, in the activities performed by this employee was either agricultural, or part of the processing operation at the mill. As a laboratory technician, 'he was entitled to receive overtime, inasmuch as none of the pleaded exemptions are applicable.'" (Op. page 126; C. R., page 2170.)

124. Finding that the amount unpaid and due appellee Pacheco is $127.11. (Op. page 127; C. R., page 2171.)

125. Finding that appellant was obligated under the Act to pay appellee Fujiwara overtime compensation for all hours in excess of 40 per week during each of the following weeks: January 6,

13, 20, 27; February 3. (Op. pages 127-128; C. R., pages 2171-2172.)

126. Finding that the amount unpaid and due appellee Fujiwara is $106.98. (Op. page 128; C. R., page 2172.)

Dated Honolulu, T. H., the 25th day of September, 1951.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
/s/ MILTON C. DENBO,
/s/ ERNEST C. MOORE, JR.,
Attorneys for Appellant.

I hereby certify that I served a copy of the above "Statement of Points on Which Appellant Intends to Rely" upon Richard Gladstein, attorney for appellees, by sending such copy to him on this date by registered airmail, addressed to him at 240 Montgomery Street, San Francisco, California.

/s/ LIVINGSTON JENKS.

September 25, 1951.

[Endorsed]: Filed September 27, 1951.

[Title of Court of Appeals and Cause.]

MOTION AS TO NON-PRINTING OF DEFENDANTS' EXHIBITS Nos. 3A AND 3B

Waialua Agricultural Company, Limited, the above-named appellant, moves this Honorable Court for an order providing that in connection with the appeal herein, Defendants' Exhibits Nos. 3A [1562-1812]* and 3B [1813-2025], introduced in evidence in the proceedings in the District Court, shall not be printed, but shall nevertheless be treated by this Court under Rule 19, paragraph 6 of the Court's Rules of Practice as part of the record to be considered on this appeal. Authority for the entry of such an order by the Court is to be found in Sampsell v. Anches, 108 F. (2d) 945, 949 (C.C.A. 9).

If this motion is granted, appellant will deposit with the clerk for the convenience of the Court two printed copies of Defendants' Exhibit No. 3A and three printed copies of Defendants' Exhibit No. 3B. (A third printed copy of Defendants' Exhibit No. 3A, however, is available to the Court in the original papers transmitted to it on this appeal pursuant to Rule 11 of this Court's rules.)

An affidavit of Rufus G. Poole, Esquire, attorney

*Note: References in brackets are to pages of the original Certified Record.

of record for appellant, in support of this motion is attached hereto.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
/s/ MILTON C. DENBO,
/s/ ERNEST C. MOORE, JR.,
Attorneys for Appellant.

Appellees hereby consent to the granting of the above motion.

/s/ RICHARD GLADSTEIN,
Attorney for Appellees.

ORDER

So Ordered, October 2, 1951.

/s/ CLIFTON MATHEWS,
/s/ HOMER BONE,
/s/ WM. E. ORR,
Circuit Judges.

[Endorsed]: Filed October, 1951.

[Title of Court of Appeals and Cause.]

MOTION AS TO NON-PRINTING OF PARTS OF ORIGINAL CERTIFIED RECORD

Waialua Agricultural Company, Limited, the above-named appellant, moves this Honorable Court for an order providing as follows:

Part I.

Only the following pages of the "Stipulation, together with attached Exhibits A, B, C, D, E, F, G, H, and I—filed August 30, 1950" appearing at pages 32-864, inclusive, of the original certified record shall be printed, and the remaining pages of said Stipulation shall not be printed but shall nevertheless be treated by this court under Rule 19, ¶6 of the court's Rules of Practice as part of the record to be considered on this appeal:

(a) The fly sheet (or appropriate abbreviation thereof).

(b) The index except the page entitled "Alphabetical List of Defendant-Employees."

(c) All of pages 1-86, inclusive.[1]

(d) The following words appearing at the top of page 181:

"Tsuruo Hayashi, Caneloading Machine Operator."

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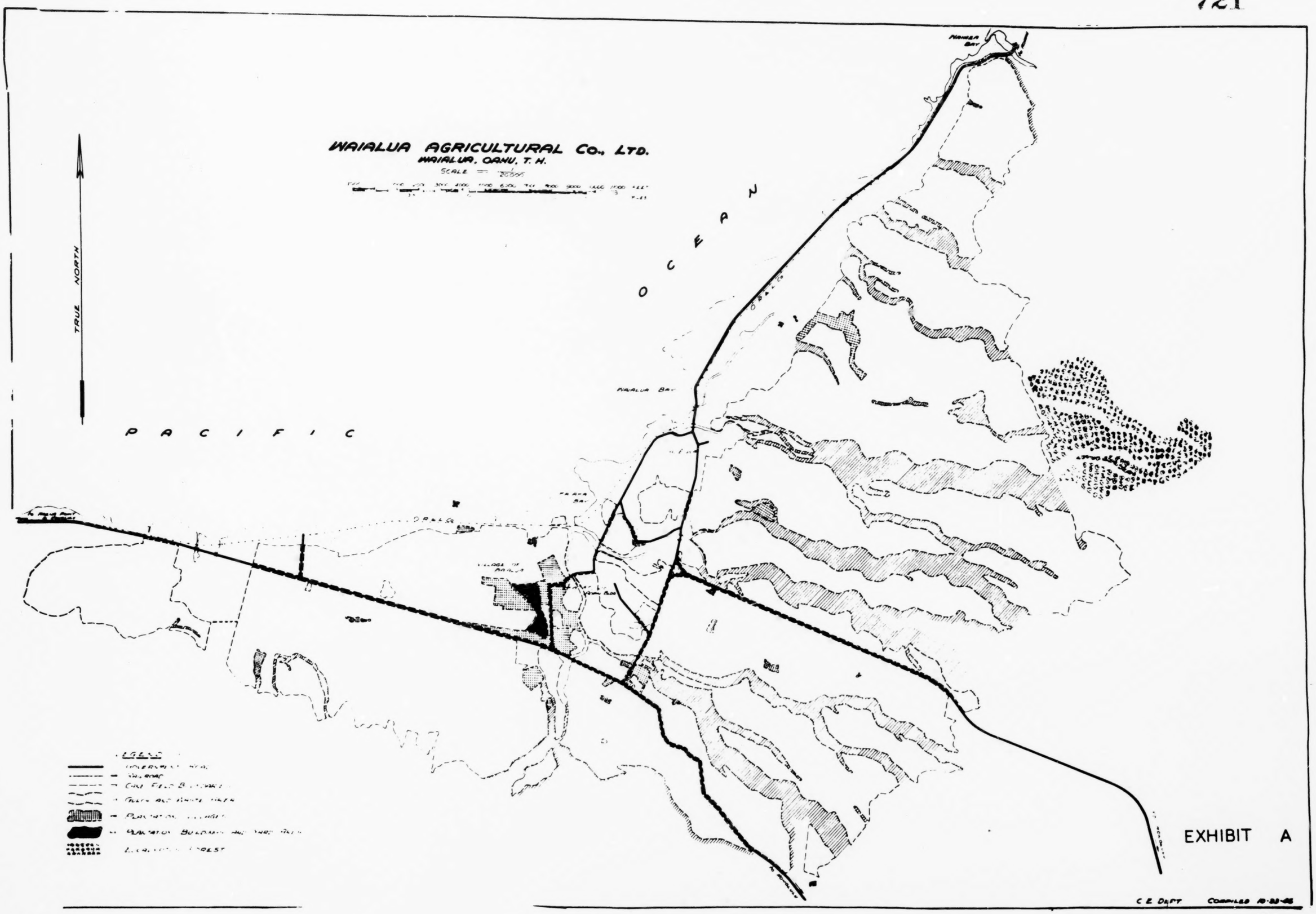
[1]All page references in subparagraphs (c) to (l), inclusive, of this Part I are to the pagination of the Stipulation as filed in the District Court August 30, 1950, and not to the pagination of the Stipulation in the original record certified to this court.



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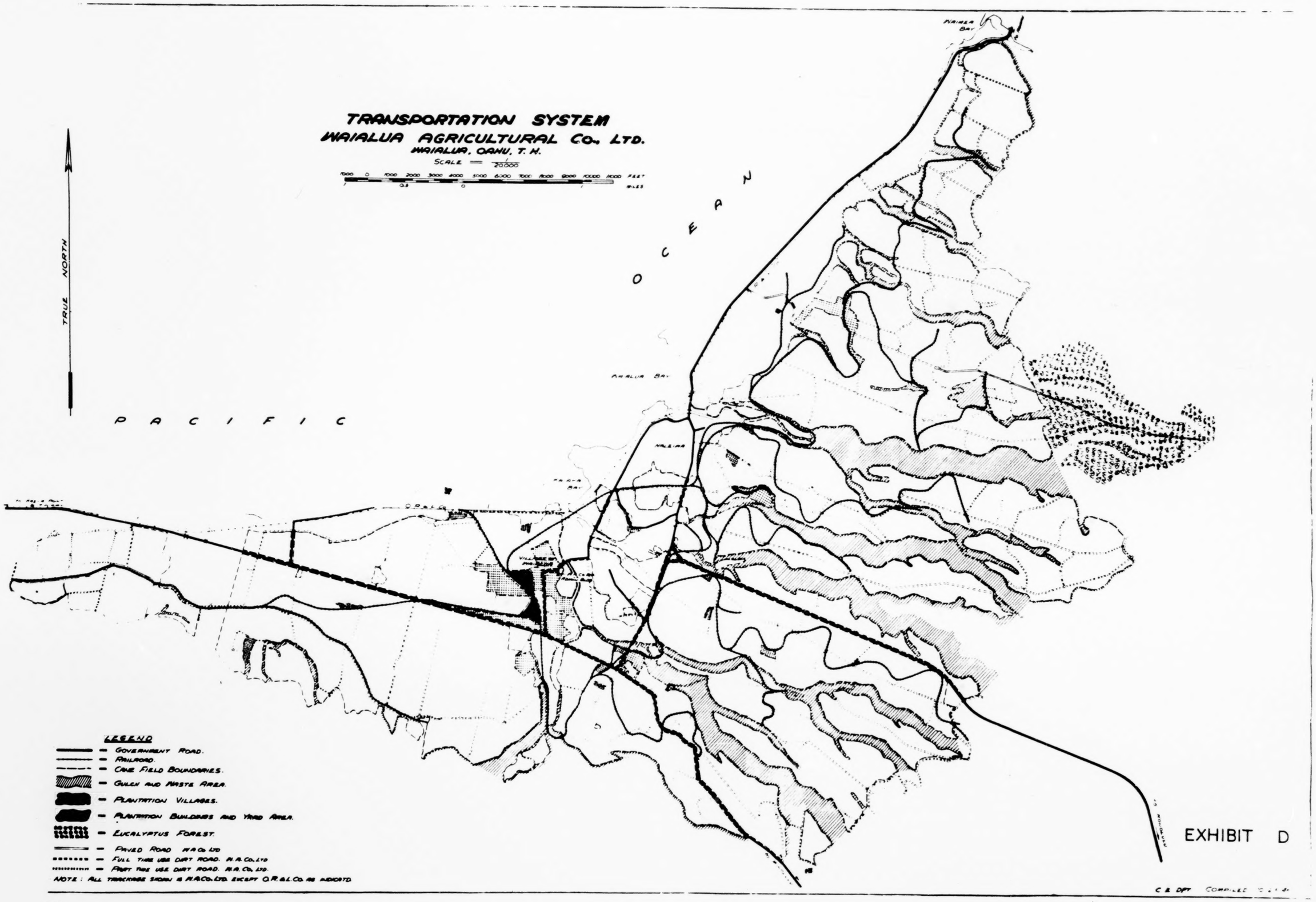

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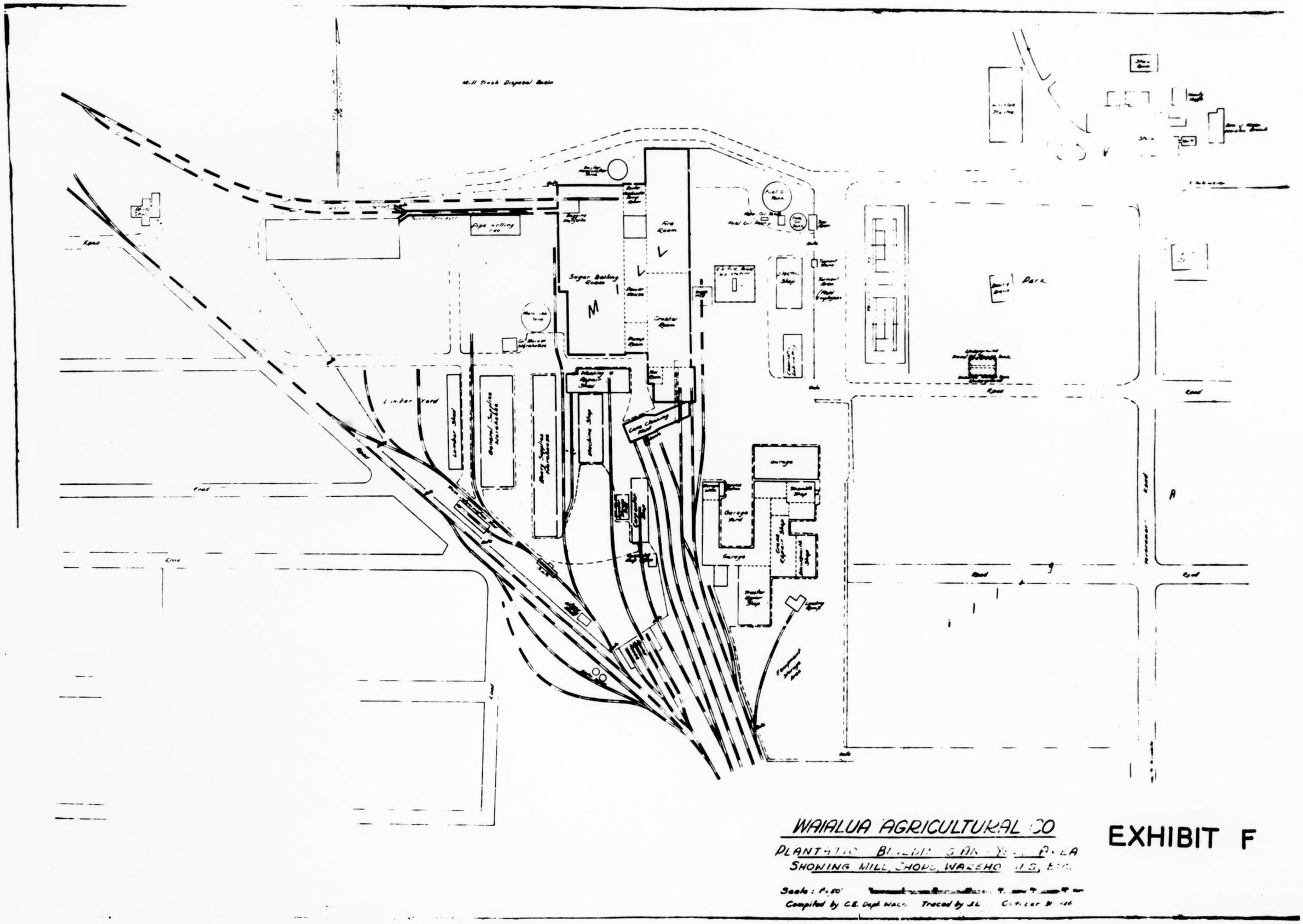

EXHIBIT F

Note:

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(e) The line on page 185 reading:

"Work week February 24-March 2, 1947, inclusive."

(f) The following on page 186:

1. The third to fifth lines, inclusive, on the page reading:

"48 hours in this work week were spent in operating caneloading machine in cane fields and 3 hours were spent in repairing caneloading machine #306 at caneloading machine repair shop * * *."

2. The line on the page reading:

"Work week March 10-16, 1947, inclusive."

3. The last three lines on the page reading:

"49 hours in this work week were spent in operating caneloading machine in cane fields and 2 hours were spent in repairing caneloading machine #306 at caneloading machine repair shop * * *."

(g) The following on page 190:

1. The line reading "Work week May 19-25, 1947, inclusive."

2. The three lines on the page immediately above the line "Work week May 26-June 1, 1947, inclusive," said three lines reading:

"47 hours in this work week were spent in operating caneloading machine in cane fields and 4 hours were spent in repairing caneloading machine #306 at caneloading machine repair shop * * *."

(h) The following on page 256:

1. The first three lines at the top of the page reading: "Peter Holmberg, Locomotive Driver, Explanatory Notes."

2. The first and third full paragraphs on the page under the heading "General Explanatory Notes," which paragraphs read as follows:

"All of the work of this employee during the period from November 20, 1946, to and including September 14, 1947, as above set forth in this numbered paragraph, was performed on the Plantation * * *."

"During the off season during the period first above mentioned, said off season being from December 22, 1946, to February 9, 1947, railroad department employees generally, including this employee, worked on a day shift which extended from 6:30 a.m. to 3:00 p.m. with ½ hour off for lunch."

(i) All of page 269.

(j) The first ten lines of page 270 reading as follows:

"Work week July 21-27, 1947, inclusive—16 hours of this work week were spent in acting as flagman to direct traffic at railroad crossing of main line of plantation railroad. 8 hours of this work week were spent in laying temporary main line of plantation railroad on plantation roadway adjoining harvesting field.

"Work week August 25-31, 1947, inclusive—

8 hours of this work week were spent in acting as flagman to direct traffic at railroad crossing of main line of plantation railroad."

(k) The following words appearing at the top of page 726:

"Part III. Additional Data Relating to Work and Duties of Defendants."

(l) All of page 771.

(m) All of Exhibits A, B, C, D, E, F, G, H, and I.

Part II.

Only the following pages of the "Amendment to Stipulation—filed September 5, 1950," appearing at pages 2026-2031, inclusive, of the original certified record shall be printed, and the remaining pages of said Amendment to Stipulation shall not be printed, but shall nevertheless be treated by this court under Rule 19, ¶6 of the court's Rules of Practice as part of the record to be considered on this appeal:

(a) The fly sheet (or appropriate abbreviation thereof).

(b) All of page 1.[2]

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[2]All page references in subparagraphs (b) to (d), inclusive, of this Part II are to the pagination of the Amendment to Stipulation as filed in the District Court September 5, 1950, and not to the pagination of the Amendment to Stipulation in the original record certified to this court.

(c) The first seventeen lines of page 2 reading as follows:

"No. 787, that the Stipulation filed herein on August 30, 1950, be and the same hereby is amended in the following respects:

"1. Numbered paragraph 61 of said Stipulation, relating to Seraphine Robello, Power Plant Operator, is hereby amended by adding a new paragraph in the Explanatory Notes in said numbered paragraph, on page 451 of said Stipulation, which new paragraph shall follow the third paragraph on said page and shall read as follows:

" 'Furthermore during each work week of both the grinding seasons and the off season he started and stopped and serviced and repaired air compressors which furnished compressed air which in each such work week was used throughout the plantation mill as described in paragraphs 16 to 25, both inclusive, of this Stipulation and also in the plantation service shops described in paragraphs 26(a) to 26(i), both inclusive, and 26(l), of this Stipulation.' "

(d) All of page 5.

Part III.

Only the following pages of the "Opinion and Decision of Court Containing Findings of Fact and Conclusions of Law (including the direction for entry of judgment thereon) filed May 3, 1951," appearing at pages 2044-2184, inclusive, of the orig-

inal certified record shall be printed, and the remaining pages of said Opinion and Decision shall not be printed, but shall nevertheless be treated by this court under Rule 19, ¶6 of the court's Rules of Practice as part of the record to be considered on this appeal:

(a) The fly sheet (or appropriate abbreviation thereof).

(b) All of pages 71 to 140, inclusive.[3]

Part IV.

The following parts of the record shall not be printed but shall nevertheless be treated by this court under Rule 19, ¶6 of the court's Rules of Practice as part of the record to be considered on this appeal:

1. Defendants' Exhibit No. 1 [1287-1555].[4]

2. Supersedeas Bond [2210-2212].

3. Order Extending Time to File Record on Appeal and to Docket Appeal [2213-2214].

4. Order Extending Time to File Record on Appeal and to Docket Appeal [2215-2216].

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[3]Said pages refer to the pagination of the Opinion and Decision as filed in the District Court May 3, 1951, and not to the pagination of the Opinion and Decision in the original record certified to this court.

---

[4]All page references in brackets in this Part IV are to pages of the original Certified Record.

An affidavit of Rufus G. Poole, Esquire, attorney of record for appellant, in suport of this motion is attached hereto.

/s/ RUFUS G. POOLE,
/s/ LIVINGSTON JENKS,
/s/ MILTON C. DENBO,
/s/ ERNEST C. MOORE, JR.,
Attorneys for Appellant.

Appellees hereby consent to the granting of the above motion.

/s/ RICHARD GLADSTEIN,
Attorney for Appellees.

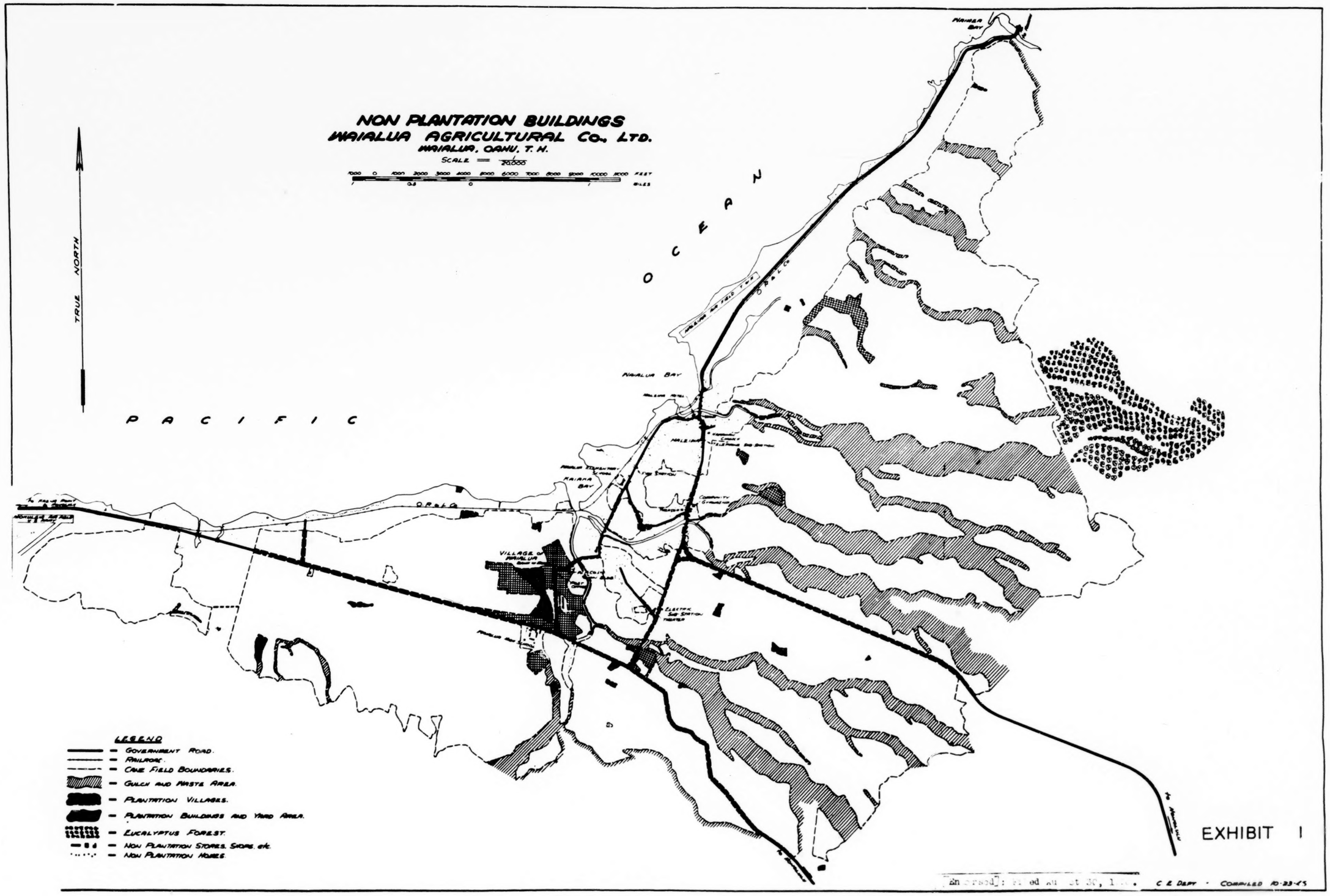
ORDER

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge,

/s/ WILLIAM HEALY,
/s/ HOMER BONE,
United States Circuit Judges.

[Endorsed]: Filed November 28, 1951.



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Vol. III

TRANSCRIPT OF RECORD

(Pages 725 to 844)

Supreme Court of the United States

OCTOBER TERM, 1954

No. 357

CIRACO MANEJA, ANTONE VIERRA, TADAO WATANABE, ET AL., PETITIONERS,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED PETITIONER,

vs.

CIRACO MANEJA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1954

CERTIORARI GRANTED NOVEMBER 8, 1954

Opinion of United States Court of Appeals for the Ninth Circuit, Dated May 5, 1954

No. 13,114—Opinion—May 5, 1954

WAIALUA AGRICULTURAL COMPANY, LIMITED, *Appellant*,

vs.

CIRACO MANEJA, ET AL., *Appellees*.

Appeal from the United States District Court for the District of Hawaii

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Before HEALY, BONE, and FEE, Circuit Judges

JAMES ALGER FEE, Circuit Judge:

This case must be reversed for error in approach. Waialua initiated the procedure by petition for declaratory judgment. The trial court, misled by the nature of the cause and the attitudes of the parties, decided the wrong issue.

The status of Waialua was tried out. It was contended by Waialua that it was engaged in agriculture, and therefore all of its employees were exempt from application of the statute. The trial court, in its first declaration, which was reversed for lack of findings, and in its present declaration and judgment, took the converse position. It has held that Wailua, through corporate affiliations, interlocking directorates and factor relationships, was a manufacturer of refined sugar on the mainland, and there engaged in interstate and foreign commerce.[1]

By agreement of all parties and the Department of Labor, that Court finds that all employees of Waialua except one group[2] "are engaged in commerce or in the production of goods for commerce." Therefore, it was concluded that every employee of Waialua on Oahu, Territory of Hawaii, was subject to the drastic provisions of the Act for each work week in which he did not spend every employed hour in an activity such as planting, irrigating, cultivating, ratooning or cutting and loading cane.[3] In pursuit of the fallacy so induced, the Court refused to describe each employee who harvested the crop by reduc-

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[1] The trial court found that Waialua does not "directly engage in any sugar refining operation." 97 F.Supp. 198, 203.

[2] This group is composed of employees who perform the work of repairing and maintaining dwelling houses in the mill village. These employees the Court found, independently of agreement, were employed in the production of goods for commerce. 97 F. Supp. 198, 226-232.

[3] These activities are particularized by the trial court at 97 F.Supp. 198, 219, paragraph [3].

ing cane to raw sugar and molasses, an operation essential to its preservation, as an agricultural worker.[4]

Thus the trial court did not give effect to the language of the statute which excludes from its operation anyone "employed in agriculture"[5] and defines "agriculture" to include "farming in all its branches and among other things * * * the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural and horticultural commodities * * * and any practices * * * performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."[6]

After a remand upon a previous appeal,[7] on motion of Waialua, the International Union was eliminated and its Secretary, Jack Hall, stricken from the defendants. The representative character of the original proceeding was

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[4] The trial court, disregarding an express direction of this Court, allowed the processing exemption, which is beside the point. The activity was excluded by the terms of the Act. In its previous opinion, 178 F.2d 603, this Court stated: "Not only was it the desire to exempt processing as a part of the harvesting done by a farmer or on a farm, but also processing done by a third party. These provisions are not alternative or mutually exclusive, and should be liberally construed for the reasons given by this Court in McComb vs. Hunt Foods, Inc., 9 Cir., 167 F.2d 905, 908." (page 609). The processing exemption, 29 U.S.C.A. § 207(c), is directed primarily toward that "processing done by a third party." See also Walling vs. Peacock Corporation, 58 F.Supp. 880, 883; Redlands Foothill Groves vs. Jacobs, 30 F.Supp. 995, 1006.

[5] 29 U.S.C.A. § 213(a)(6). "* * the raising and harvesting of sugar were specifically given consideration by Congress on account of the immense importance to the economy of this country as a whole." Waialua Agricultural Company, Limited vs. Maneja, 9 Cir., 178 F.2d 603, 608, paragraph [6-8].

[6] 29 U.S.C.A. § 203(f).

[7] Waialua Agricultural Company, Limited vs. Maneja, 9 Cir., 178 F.2d 603, cert. den., 339 U.S. 920.

also abandoned. The individual workers, most of whom were retainers and dependents of Waialua although union members, were permitted to file a so-called cross-complaint, praying for relief in sums of money, and this time several of these individual employees gave testimony as to the kind of work each did. None of these devices, adopted to meet criticism of this Court, changed the fundamental character of the proceeding. The individual employee cross-complainants still seem "pawns in this battle of the demi-gods." Waialua seems to act to preserve relations with the Union and a federal bureau, as a policy. Practically all facts are agreed and, as above noted, constitutional and jurisdictional conclusions as to coverage were accepted. Thereby, emphasis was placed upon the wrong problems.[8] This conjugation by consent removes the cause from the class of "cases and controversies" and is an abuse of declaratory judgment procedure. The only bitterly partisan litigant is an executive bureau not named in the record as a party. Notwithstanding a plain warning of this Court upon the last appeal that such evidence was impertinent to the whole question as to whether the individual employee was an "agricultural worker," the parties introduced at this trial and the Court adopted as a basis for decision two treatises. These were entitled, respectively, "Labor in the Territory of Hawaii, 1939" [9] and "The Economy of Hawaii in 1947," [10] studies made under the supervision of a department of the government,

[8] The suggestion of the trial court in one opinion that the exclusion of agriculture would free farmers from the "oppressive child labor" provisions of the Act need not be too much regarded. Such a problem does not exist. And we have come a long way from sound thinking in America if it be suggested that a farm boy should not work on a farm. Of course, the bureaucrats could take much better care of him.

[9] James H. Shoemaker, U.S. Bureau of Labor Statistics, United States Government Printing Office, 1940.

[10] Bulletin No. 926, United States Department of Labor, United States Government Printing Office, 1948.

which, as noted above, took an active part not only in the trial court, but on both appeals.

Thus a false issue was created. Instead of concern with the question of who was employed in agriculture, the attention of the Court was deflected to a consideration of membership of Waialua in a non-profit sugar refining and marketing cooperative called "California & Hawaiian Sugar Refining Corporation, Ltd.", of California, which was engaged in the manufacturing business of refining raw sugar, marketing the product, and transporting the refined sugar to the consumers.[11] But all the activities of the latter were carried on upon the mainland. No one of

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[11] A similar contention was made by the Administrator of the Wage and Hour Division, as a bitterly partisan litigant under the guise of amicus curiae in Miller Hatcheries, Inc. vs. Boyer, 8 Cir., 131 F.2d 283, 285, where Judge Johnsen, in an illuminating opinion, held that employees of a commercial hatchery were excluded because "employed in agriculture." There the Administrator contended "that the hatching of baby chicks by a commercial hatchery is an industrialized and highly specialized activity which does not itself have any direct connection with 'farming operations'; that the economic function of such an urban establishment is completely disassociated from the agricultural activities," that "thus transposed from a farm to a commercial establishment it ceases to be a technical farming activity" and that "the attributes of farm labor which justify its exclusion * * * ought not to be regarded" as extending to a commercial operation.

This compares with the contentions of the Administrator here: "To accomplish its purpose of producing raw sugar, appellant plainly engages in many separate and distinct enterprises appropriate to that end, including manufacturing and transportation, as well as farming. This integration of business operations neither conceals the essential nonagricultural character of appellant's manufacturing functions nor submerges the fact that appellant, in operating a hybrid type of business, has assumed the functions of a manufacturer and a railroad company, as well as those of a farmer. * * * Just as the chain store cannot obtain the retail exemption for its central office and warehouse merely because the services of those units are restricted to exempt retail outlets, so here, appellant cannot achieve exemption for its separate manufacturing function and its railroad activities simply because it utilizes them only for the products of its farm."

its employees is here involved. None of the workers of Waialua was employed by the cooperative.

If the pertinent question of employment in farming had been considered instead, then the language of the statute defining such employees would have been given effect.[12]

The decisions of this Court bear out the breadth of the exclusion of agricultural workers. Dofflemyer vs. National Labor Relations Board, 9 Cir., 266 F.2d 813 (Judge Healy) shows that technical distinctions should not be used to circumscribe the words "farmer" and "farm" as used in the Act. The necessity for immediate processing of a farm product is of great force in emphasizing the scope of the agricultural exclusion, according to Judge Bone, writing for the majority in McComb vs. Hunt Foods, 9 Cir., 167 F.2d 905, where the interpretations of three different district courts in widely separated agricultural areas of the mainland are followed. There the Court said:

> "'The policy of protection to the growers of "perishable and seasonal fresh fruits" is of as much force as that of the protection of general industrial workers. The objective of a uniform rule for hours and wages in manufacturing should not be allowed to prevail over the paramount necessity of garnering and preserving fruits and grains when Congress equally recognized both in the Act. The hypertechnical reasoning concerning "exceptions" and "exemptions" has no place here. A direct expression of non-applicability constitutes neither.'

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[12] In an interesting case parallel to this in another food supplying industry, the Court of Appeals of the Third Circuit held, in an able opinion by Judge Maris, that all employees necessary to carrying on a fishery and fish processing activities were "exempt by the plain language of Section 13(a)(5) of the Act." McComb vs. Consolidated Fisheries Co., 3 Cir., 174 F.2d 74, 78. It should be marked with red on the margin of this case that the Administrator was there contending that all employees of a farmer, including those engaged in first processing, were excluded by the language, but that the exemption to fish processors was much narrower.

> "This is but another way of saying that if the business operations claimed to be exempt are found to fall within the exempt classification, the statute is, as to them, a 'remedial' statute. We agree with the lower court that no formalistic characterization should be permitted in dealing with any of these clauses since the plain intention of the statute should be carried out." (page 906).

The trial court was thus in error in requiring Waialua to prove beyond peradventure the affirmative of the proposition that each worker was employed in agriculture and in activities by a farmer and on a farm. By an unwarrantedly strict construction, Waialua was required to establish exemptions beyond a reasonable doubt, as though it were negativing a jurisdictional proviso in an indictment.

Upon the former appeal, to which reference has been made, the Court questioned the aptness of the declaratory proceeding, but remanded because the findings were not sufficient to support any judgment. The findings before us are now meticulous and exact as to the hours and type of work performed by each worker defendant during each work week in question. However, the trial court failed to find many vital facts which the record, as we view it, bears out, and made many findings which are clearly erroneous. For these reasons alone, the cause must be reversed.

A vital finding contains the implication that sugar cane can be stored in Hawaii three or four days without spoiling.[13] In fact, a delay of three or four hours is apparently deleterious, and for best results the cane, after cutting, should move continuously from field to crushing mill.[14]

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[13] 97 F.Supp. 198, 203.

[14] "Sugar cane is highly perishable * * * and starts to deteriorate immediately after harvesting. To avoid serious losses, it must be processed into sugar, syrup or molasses within a few hours after it has been burned or severed from the ground." Stipulation of Fact, Part I, § 4.

The Court concludes that no worker at the crushing mill is employed in agriculture but is exempt only insofar as he assists in first processing. If necessity for immediate treatment for preservation had been found, the Court would have been impelled to find an employee at the mill was engaged in "harvesting" an agricultural product. The Court found transportation of cane from fields to cars was farming, but carrying of cane on cars drawn by a locomotive from loading points to the mill was "railroading" and transportation in commerce. Again, the railroad and its crew performed no other kinds of transportation, and therefore what each did was "harvesting." The complete operation was vitally necessary to put the crop into a form in which it would not spoil and, as "raw sugar," could be transported to the mainland for manufacturing. Any activity of any employee which assisted in this operation, whether furnishing power to the mill or hauling cane from field to mill, fell within the express word "harvesting" used in the enactment. Such a finding was not made. Those which were made were erroneous.

Even if it could have been concluded that these activities were not "harvesting," they were nevertheless carried on by a "farmer."[15] Furthermore, such activities were performed "on a farm." On either of these independent grounds, workers so employed were excluded by the enactment.

But the Court failed to find that Waialua was a farmer.[16] The record and stipulations show conclusively that

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[15] Employees of a "farmer" who work in or out of a store, transporting, packing and selling plants in connection with a wholesale and retail outlet located in a city four miles from the "farm" are held to be employed in agriculture. Walling vs. Rocklin, 8 Cir., 132 F.2d 3. "The raw products were at most being prepared for market in connection with the business of producing them." (page 6).

[16] The trial court held, contrary to the stipulations and evidence, that Waialua "assumed a variety of functions, including those of farmer, carrier, manufacturer, shipper, and operator of village communities." 97 F.Supp. 198, 218.

all activities of Waialua upon the island of Oahu were concerned with growing, cultivating and harvesting sugar cane. It should have been found that Waialua was a farmer, and all workers performing functions for it on the plantation were employees of a farmer. It should have been found that transportation of cane to the mill and the crushing and drying of the raw sugar therefrom were activities performed by a farmer as incidents to and in conjunction with farming operations, including harvesting, preparation for market and delivery to storage. Findings of fact which have contrary implications are clearly erroneous.

The trial court also found neither railroad nor crushing mill were "on a farm." [17] The admissions, maps and other exhibits indicate all the activities of employees of Waialua were carried on within the boundaries of a single parcel of land described as a "plantation."

The railroad and the mill [18] were located upon a plot of ground and appurtenances all of which were in exclusive possession of Waialua. Practically all the area was also in its "ownership," [19] although some acreage was leased and one field was connected with the main body by a right of way for moving its agricultural equipment, supplies and sugar cane. By far the greater percentage of the ground in the area was devoted to raising and harvesting of sugar cane in a year round process as an inte-

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[17] The trial court apparently confines the meaning of the word "farm" to the fields upon which cane is actually grown, for it is pointedly said in the opinion, "Obviously cane is not grown on the right-of-way occupied by the fifty-six miles of permanent main line railroad track." 97 F.Supp. 198, 222. Cane probably does not grow on roads where ox teams hauled cane.

[18] The trial court's opinion states that the mill was on the plantation. 97 F.Supp. 198, 204.

[19] Discussion of the peculiar land system of Hawaii is not necessary.

grated operation. This situation dictates that the locus in quo be found to be a "farm." [20]

If then the particular activity of an employee was neither "cultivation and tillage of the soil" or "the production, growing and harvesting" of this crop, he was engaged in a practice performed "by a farmer or on a farm" under the conditions set up in the statute.[21]

Misled by the apparent wholehearted agreement as to the constitutional and jurisdictional conclusion regarding preparation of goods for commerce, the trial court inferred that a worker engaged in any operation or practice

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[20] National Labor Relations Board vs. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 187: "The argument that Respondent has 1,000 acres planted in tomatoes and grows, packs and markets many carloads in a season and, because of the very nature and size of its operation, should be held to be engaged in an industrial enterprise as distinguished from the pastoral pursuits of a farmer, will not do. The exemption was not restricted to the forty-acres-and-a-mule farmer. It is not measured by the magnitude of his planting nor in the prolificacy of his harvest. In Larson v. Ives Dairy Co., 5 Cir., 154 F.2d 701, 702, we said: 'Here, however, there is but a single enterprise, and that a dairy farm. * * * The size of the farm, of course, does not matter—it is still a dairy farm.' Here, also, the growing, harvesting, packing and selling are all a part of a single enterprise."

[21] "Congress, as well as this Court, has recognized that the packing and preparing of agricultural products for the market is a necessary incident to any agricultural operation, for no farmer, dependent upon that which he produces to sustain his operations, could long exist if he could not market that which he produces, and so long as the operation of washing, packing, and preparing for market by the employees of a farmer is on that only which he has produced on his farm, it is a necessary incident to farming and is agricultural labor. The wheat farmer must thresh his wheat; *the cane grower must cut his cane and make its juice into syrup;* the cotton grower must gin and bale his cotton; the citrus grower must pick and pack his oranges; and the tomato grower must do likewise. So long as these undertakings are in the preparation and packing by him for market of that which he has grown on his farm, the labor necessary thereto is agricultural labor." National Labor Relations Board vs. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 187 (emphasis added).

which was considered not farming by the strictest classification was covered by the enactment. We emphasize that, if it had been found that reduction of cane to raw sugar or molasses almost immediately after cutting is an imperative necessity, the palpable falsity of such sequela would have been patent. The integrated operation required making of repairs on the crushing mill while shut down for three months for that purpose, the repair and overhaul of the various machines used in cultivating, cutting and hauling, and the furnishing of power for the mill, including the hauling and burning of bagasse[22] in the furnace thereof.

In order to show how obviously it was on the wrong path, it may be observed the trial court concluded employees assisting in repair and maintenance of houses and the operation of services and facilities of villages on the plantation, where some of these agricultural workers lived, including the street sweeper and those who picked up wood for cook fires, were engaged in the preparation of goods for commerce. In this conclusion, which even the Department of Labor does not attempt to defend in its current argument, the trial court betrays emotional aversion for the semi-feudal relationships which still exist in a dependency where the perquisite system abolished by Waialua under pressure still exists.[23] The fact that some of the retainers have lived in these houses of the overlord for life or for more than forty-five years[24] is not good reason to apply the Fair Labor Standards Act, even if this Court also disapproves of the condition.

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[22] The end residue of the cane after abstraction of the juices.

[23] The District Court describes the perquisite system at 97 F. Supp. 198, 214. By a collective bargaining agreement effective November, 1946, this system was abolished and the value of perquisites previously allowed was converted into cash wages.

[24] See the tabulation prepared by the trial court, 97 F.Supp. 198, 215.

The furnishing of housing and facilities for a purely agricultural community is local in its nature.[25] Perversion of concepts and language is essential to transmute irrigation of a growing crop, harvesting by performing processes immediately necessary for crop preservation, or furnishing essential housing to farm workers, into the production of goods for commerce. Mere rationalization will not metamorphize the practice of furnishing housing to workers so engaged into manufacturing. Such conveniences are traditionally furnished in the several states in larger operations of farms, ranches, orchards and plantations. In any event, here the furnishing of quarters for such of its workers who desired to live on the plantation on ground owned by Waialua was a convenient adjunct of farming.

We are forbidden by statute, custom and rule from making new findings of fact, even where we believe these are demanded by the record. This prohibition does not vanish where, as here, comprehensive agreements of facts are made in writing and much of the proof is documentary while the testimony does not bear on the contested issues. Writings and agreements of the parties are notoriously meretricious in dealing with jurisdictional or constitutional questions. Where some findings are clearly erroneous, our duty is to reverse.

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[25] In a case where the employer was engaged in manufacturing, it was said, "* * * the plaintiffs were not covered by the Act while engaged exclusively in 'the construction, maintenance and repair of the residences in the mill village owned by defendant and occupied by its employees'; or, to state the matter differently, while the plaintiffs were so employed they were not engaged in the production of goods for commerce as that term has been defined." Morris vs. Beaumont Manufacturing Co., 84 F.Supp. 909, 910-911. Soomer vs. Durham, 93 F.Supp. 526, is an interesting case wherein building and repair of houses by employees of a coal mining company engaged in the production of goods for interstate commerce under the Fair Labor Standards Act is discussed.

This brings us to a consideration of a constitutional question of some magnitude. Should a statute of general application throughout all the states be given special construction in order to cure economic abuses indigenous to Hawaii? Congress has almost autocratic power over a territory. The commercial status and labor problems of Hawaii might well be settled by specific statute.[26] But the

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[26] The thesis that the peculiar problems of a territory should not be permitted to affect construction of an act designed to protect farmers in the states is well illustrated by the progress of affairs in Puerto Rico, where the situation is even more bizarre than that in Hawaii.

Congress has approached the problem of labor in possessions pragmatically by means of extended investigations and reports. As a result of a realistic awareness of the ideochromatic characteristics of each dependency, the Sugar Act of 1937, Act, September 1, 1937, c. 898, 59 Stat. 903 ff., was enacted, which differentiated explicitly between sugar produced on the mainland and that produced in the dependencies, territories and protectorates, and that produced in the latter between the separate areas. The Court of Appeals for the First Circuit necessarily reconciled the provisions of the Fair Labor Standards Act with the clauses of the Sugar Act applicable to Puerto Rico, Vives vs. Serralles, 145 F.2d 552. Legislatively, the requirement that there be special enactments relating to Puerto Rico has been recognized by the passage of the Act of August 8, 1947, c.519, Title II, § 202, 61 Stat. 924, as amended September 1, 1951, c.379, § 1, 65 Stat. 318. The enactment by Congress of legislation amendatory of the Fair Labor Standards Act, relating particularly to Puerto Rico and the Virgin Islands, Act of October 26, 1949, c.736, § 8, 63 Stat. 915, indicates conformity to the strict letter of the former statute might unhinge the economy of these islands.

When the Act was new, the Wage and Hour Division interpreted the harvesting of the raw sugar from cane as "preparation for market" if done by a farmer. Subsequently, because of a series of decisions relating exclusively to Puerto Rico, the Administrator said the Wage and Hour Division had made a mistake in this interpretation, and that harvesting resulting in molasses and raw sugar was not excluded by the Act. This opinion was advanced with no consideration of the special conditions and legislation relating to the territory and with the intent that the construction be applied to the statute within the several states to which the special provisions of the enactments did not apply.

As noted previously (178 F.2d 603, 611), the Puerto Rican cases are generally distinguishable in that they are not related to activi-

same regulation of agriculture in the states on the mainland would be unconstitutional. In each of the two opinions of this case,[27] the trial court reviewed the whole economic structure of the Territory of Hawaii, the factor system of marketing native products, the vestiges of feudal incidents, the peculiar land system and the dependency of the islands upon the mainland. To crown all, the theory of appellees is that Congress, in passing the Fair Labor Standards Act, did not have in contemplation such an agricultural giant[28] as this farming corporation in a sea island of the Pacific, and therefore the Court refused to exclude its workers employed in agriculture. This premise is obviously based upon the idea that the language of the Act clearly excludes employees of such a corporation, but, if Congress had contemplated Waialua, the law would have placed such workers under the wages and hours provisions. But, disregarding all logical conclusions from its premise, the trial court applied the drastic overtime pro-

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ties performed by a farmer or on a farm, but are either cooperative enterprises or are done by some outside agency. On the other hand, certain judicial interpretations, if viewed as interpretations of the general act binding on farmers on the mainland, are excrescences as foreign as gargoyles on a classic temple. McComb vs. Puerto Rico Tobacco Marketing Co-op Assn., 80 F.Supp. 953, affirmed, 1 Cir., 181 F.2d 697; McComb vs. Del Valle, 80 F.Supp. 945; McComb vs. Casa Baldrich, Inc., 80 F.Supp. 869; McComb vs. Super-A Fertilizer Works, 1 Cir., 165 F.2d 824.

[27] Found at 77 F.Supp. 480 and 97 F.Supp. 198.

[28] The Supreme Court expressly recognizes that largeness is not the test. In Addison vs. Holly Hill Fruit Products, Inc., 322 U.S. 607, 614-615, the Court adopted with approval and applied in the solution of a like problem an expression uttered in a debate in the Senate. "Senator Schwellenbach frankly stated that the largest apple packing plant in the world would be exempt if the 'work done in that plant is as described in the amendment'." The Court summarized its position as follows: "Where Congress wanted to make the exemption depend on size, as it did in two or three instances not here relevant, it did so by appropriate language. Congress referred to quantity when it desired to legislate on the basis of quantity."

visions in all their rigor to the peculiar corporation which Congress had not considered.

If we were drafting a specific law to deal with labor conditions of Hawaii, emotional sympathy for some of the attitudes of the trial court might be given effect. But we are construing a general statute binding in all the states as well as this territory.

Everyone who remembers the history of this legislation knows that the mainland farmers were alert when these bills were in Congress. The Congressional Record indicates how changes in the language were required by them and that the legislators debated and explained the effect of each provision.[29] The statute which was written seems plainly to protect all possible phases of agricultural pursuits from regulation.[30] But the drive of a motivated bureau, which apparently considers the interests of labor utterly inimical to any protection of the farmer, has distorted the language used by some of the courts.

Do some opinions mean that the plain expressions of Congress in the statute excluding those employed in agricultural pursuits are to be overridden by some higher policy. The expressions of Congress were dictated not only by the pressure of the farmers, but by the realization that the federal constitution left local concerns such as agriculture wholly in the governance of the several states.

One of these perversions which might be allowable in a statute applicable to a territory alone is the attempt to

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[29] See 81 Congressional Record 7648 et seq., 83 Congressional Record 7393, 9162-9163, 9253 et seq., H.R. No. 1452, 75th Congress, 1st Session, pp. 4-5, 11; H.R. No. 2182, 75th Congress, 3rd Session, p. 2.

[30] The agricultural exclusion "is drawn in far reaching language which shows the intent of Congress to make the term 'agriculture' cover much more than what might be called ordinary farming activity and that is what now controls." Damutz vs. William Pinchbeck, Inc., 2 Cir., 158 F.2d 882, 883.

make the farmer prove affirmatively that the particular activity falls within the statutory exclusion. The use of the word "exemption" in a heading of the enactment has been seized upon by the bureau and followed by the language of some of the courts.[31]

But agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in a constitutional sense.[32] Most agricultural products eventually get into interstate transportation. But growing and harvesting of such products is not preparation of goods for commerce. The statute sets this out in immutable terms by expressly stating that preparation of goods for market by a farmer or on a farm is excluded.

So we must go further and direct the proceeding be dismissed for abuse of discretion in entertaining a petition for declaratory judgment here and attempting to settle

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[31] This Court, in the former opinion, 178 F.2d 603, 609, indicated that the workers in agriculture were completely excluded from the provisions of this Act. The language of the statute makes it abundantly clear that, since agriculture is a local enterprise and cannot without distortion be called commerce or preparation of goods for commerce, the manifest intention was to exclude workers on farms and those employed in agriculture from the sweep of the Act. The use of the words "exempt" and "exemptions" in the regulations and by the courts is justified by the text. But the words of the statute, "shall not apply with respect to", indicate a policy of exclusion of such employee no matter what the business of the master. With regard to agriculture, this policy of exclusion was as powerful as the policy which dictated the general provisions controlling employees in industrial pursuits There is no ground to invoke the theory of technical, narrow construction of the Act to cover this basic food supplying industry. Walling vs. California Conserving Co., 74 F.Supp. 182, affirmed, 9 Cir., 167 F.2d 905, cert. den., 335 U.S. 845.

[32] Federal regulation of agriculture invades the reserved rights of the states. United States vs. Butler, 297 U.S. 1, 68. But cf., Wickard vs. Filburn, 317 U.S. 111.

a question of jurisdictional and constitutional construction therein.[33]

It is true the statute was not passed with the peculiar economic situation of Hawaii in mind. Probably no specific contemplation of an organization such as Waialua was in the foreground. But no one can deny that the positive clauses of the Act were to assure the farmer in the several states of the continuance of his untrammeled way of life. It was the intention that no bureau should dictate the hours of his work[34]—traditionally from sun to sun—in the vitally essential task of feeding this nation and foreign peoples to whom aid has been extended in the form of foodstuffs. It has been a platitude of American politics that the farmer is required to pay higher prices for those things which he buys than he can obtain for the products which he raises and sells. It was in the effort to prevent the specialization of labor employed in agriculture, where every man must be able to do all of the multitudinous tasks, that these sections were adopted. It was to the end that the farmer could use in the operations on the farms unskilled and migrant labor, so that his economic burden might in one respect be lessened. These provisions of the statute were included to prevent placing innumerable restrictions and crushing burdens by bureaucratic supervision upon the American farms of the mainland.

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[33] "This Court is without power to give advisory opinions. It will not decide constitutional issues which are hypothetical, or in advance of the necessity for deciding them. * * *." Asburn Hospital vs. Cass County, 326 U.S. 207, 213.

[34] Speaking of the Fair Labor Standards Act and other acts, the Court of Appeals for the Fifth Circuit states: "* * * that exemption seems to have been a part of a general legislative pattern of those times which clearly indicates that the purpose of Congress was to relieve distressed farmers from burdens which it well knew they were not equipped to carry." National Labor Relations Board vs. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 187.

There has been an attempt to use the Farmers Reservoir case as a precedent here.[35] The gist of the decision there was that release of water from a headgate by the field men of the reservoir company was not farming, (as actual application of the water to a growing crop would have been); it was not an act done by a farmer in connection with farming and it was not done on a farm. The decision on these specific grounds must be followed. Besides, there is no reason to question its logical validity on the basis above set out. It is true that the majority unfortunately accepted the acquiescence of the parties as establishing the constitutional and jurisdictional factor that the employees of a local irrigation company were engaged in a "process or occupation necessary for the production of goods for commerce." Thereby the longstanding principle of decision that a constitutional and jurisdictional issue will not be debated or considered unless actively raised by the parties was abandoned. Nor can we accept as an explanation that rationalization leads to quaint results.[36]

However that may be, in this case in a declaratory judgment proceeding in a territory, all parties and the Department of Labor acquiesce in the proposition that farming itself is production of goods for commerce. We repudiate consent of the parties as a basis for decision. Upon this fallacious theory, the trial court arrived at its findings and conclusions here accused. We hold that a farming operation such as growing the crop or harvesting is not commerce. By no dialectics can it be shown that irrigation, cultivation, plowing of the ground, pruning of the trees or any of the processes before harvest,

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[35] Farmer's Reservoir and Irrigation Co. vs. McComb, 337 U.S. 755.

[36] "Both in the employments which the Fair Labor Standards Act covers and in the exemptions which it makes, Congress has cast upon the courts the duty of making distinctions that often are bound to be so nice as to appear arbitrary in relation to each other." Id. at 770 (concurring opinion).

whether performed by a farmer or on a farm, are other than purely local concerns relating to the production of a crop. Common sense forbids it. Jurisdiction to regulate farming on the ground that the products thereof may eventually go into commerce cannot be conferred by consent of the parties even in a particular case. By definition, any process essential to the growing, production or harvesting of crops is neither interstate or foreign commerce nor preparation of goods therefor, nor yet again a process or occupation necessary for the production of goods for commerce. Farming in the several states cannot be regulated as commerce even if it does constitute preparation of farm products for market. To hold otherwise would violate the express exclusionary language of the agricultural clauses of the statute and the public policy of cheap production of foodstuffs above noted.

The public welfare requires that this statute be not given a local interpretation to fit the needs of any territory, and that such special interpretations be not applied to agriculture throughout the several states.[37] The language of the exclusion interprets a constitutional guarantee. It is a charter for the mainland farmer. So far as possible, in raising food for our widespread peoples, the farmer should be exempt from higher cost of labor. He should be able to plow, cultivate, irrigate, seed and harvest his crop without paying tribute. These processes, essential to all, should not be made to cost more.[38] The

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[37] This warning was expressed in our former opinion, 178 F.2d 603, 613: "The danger is that, by agreeing to this course of conduct, a precedent might be established for the settlement of problems on the mainland which does not have the peculiar problems of Hawaii."

[38] "It does not take a long memory to recall that in the midst of the depression of 1935, and for a time before and since, the farmer was the object of the deepest solicitude by Congress. It furnished abundant evidence that it believed that no class of citizens of the country was in greater need of Congressional aid than the farmer." National Labor Relations Board vs. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 186.

farmer in California should be able to run the heads of wheat through a thresher or combined harvester and shell out the grain, clean it, test it for protein content and store it. He should be able to transport it on the farm to the thresher or to storage or market, whether by his own railroad or by trucks or by airplane. The stock raiser in Idaho should be able to use all forms of transportation carrying calves or other stock to spring pasture or feeding grounds. The stock rancher should be able to use his vaqueros to repair barns, fences, corrals and even bunkhouses, where his employees sleep, without becoming a master carpenter. The raiser of peas should be able to make repairs and changes in his tractors, viners and mowers by his own employees without becoming a master mechanic. He should be able to transport the fresh peas many leagues from his land to the canner for essential immediate processing by his trucks driven by farm hands without becoming a trucker.

The sheepman can have a worker employed by him run the system of gas or home-generated electricity which lights up innumerable farm buildings and feed the chickens he sells without becoming subject to the higher costs under the industrial provisions of this law. The orchardist of Washington should be able on his own land to pare and core the apples, transport the meat thereof to market, press out cider from the corings and peelings in a steam driven mill on his own land, and apply the residual pomace as dressing to his land without becoming a manufacturer.[39] The operations described in processing raw sugar from cane in Louisiana are in the same class.[40]

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[39] The suggestion that this argument permits the farmer to carry on extraneous manufacturing of such articles as automobiles on a farm is vacuous.

[40] As in the case of Miller Hatcheries, Inc. vs. Boyer, 8 Cir., 131 F.2d 283, 286, "We are dealing with a situation where there has been 'a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in mo-

The authorities adverse to the maintenance of this declaratory proceeding are set out in the previous opinion.[41]

The territorial institutions of Hawaii had provided the protection for these workers almost identical with that which is the subject of this proceeding.[42] It is agreed by the parties that this Act requires Waialua to pay and it does pay as much or more than the minima of wages required per hour by the federal law. Perhaps if local conditions compel, the territorial legislature will require the same work week in farming as is exacted by the Fair Labor Standards Act, but without federal bureaucratic control, which would necessarily be renounced if statehood were attained.[43]

Each of these employees had an adequate remedy by action at law if any thought he was aggrieved.[44] The matter could have been tried on the facts relating to his employment without the misleading background.

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tion; of making the parts work efficiently and smoothly while they are yet untried and new'."

The Wage and Hour Division, on August 21, 1939, interpreting the Act when it was new, said:

"Section 13(a)(6) renders the wage and hour provisions of the Act *inapplicable* to employees employed in 'agriculture' * * *

"(b) The term 'preparation for market' must be treated differently with respect to various commodities. The following activities among others, *when performed by a farmer*, seem to be included within the term: * * *

"4. *Sugar—Manufacturing raw sugar, cane or maple syrup and molasses.*" Interpretative Bulletin No. 14. (Emphasis added.)

[41] 178 F.2d 603, 613-614, notes 16-28.

[42] During each workweek involved herein, Waialua's employees received wages in excess of the Act's requirements. They received overtime pay for hours worked in excess of 48 hours a week. Thus defendant employees are seeking a maximum of 8 hours overtime pay for any of these workweeks.

[43] Perhaps for this reason Congress has never passed special provisions of this law applicable only to Hawaii, as it did for the Virgin Islands and Puerto Rico. See Note 26, supra.

[44] 29 U.S.C.A. § 216(b).

The cause is reversed for proceedings in accordance with this opinion.[45]

(Endorsed:) Opinion. Filed May 5, 1954.

Paul P. O'Brien, Clerk.

Judgment of United States Court of Appeals for the Ninth Circuit, dated May 5, 1954.

Appeal from the United States District Court for the District of Hawaii.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Hawaii, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is reversed for proceedings in accordance with the opinion of this court, without costs to any party in this court.

(Endorsed) Judgment.

Filed and entered May 5, 1954.

Paul P. O'Brien, Clerk.

Opinion of United States Court of Appeals for the Ninth Circuit, dated June 24, 1954, upon Petition for Rehearing.

BEFORE: HEALY, BONE and FEE, Circuit Judges

JAMES ALGER FEE, Circuit Judge:

The opinion of the Court needs no clarification. The cause was reversed, the final orders set aside and the cause remanded with directions to dismiss Waialua's declara-

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[45] Arguments advanced by appellees and amicus curiae which are rendered immaterial because of the Court's decision are: (a) that the processing exemption, 29 U.S.C.A. § 207(c), applies only to the "place" in which processing is carried on and only during such time as processing is actually taking place; (b) that any employee who engages in a non-exempt activity for any portion of a workweek is covered by the Act during such workweek.

tory petition. The Court construes what is called the cross-complaint as a petition also for declaratory relief. This is left undismissed by this Court. If the appellees believe this to be a counterclaim at law, they may take further proceedings as suggested in the latest opinion of this Court. The parties and the Trial Court, however, should be mindful of the fact that this Court has held that the entire cause was tainted by apparent collusion between the parties in the attempt to obtain an advisory opinion upon constitutional questions. The considerations of expense in futile proceedings are, of course, the concern of the parties.

Rehearing denied.

(Endorsed:) Opinion on Petition for Rehearing. Filed Jun. 24, 1954. Paul P. O'Brien, Clerk.

Order of United States Court of Appeals for the Ninth Circuit, dated June 24, 1954, denying Petition for Rehearing.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Thursday, June 24, 1954

Before: HEALY, BONE and FEE, Circuit Judges.

ORDER DIRECTING FILING OF OPINION ON PETITION FOR REHEARING AND DENYING PETITION FOR REHEARING

ORDERED that the typewritten opinion this day rendered by this Court on petition for rehearing in above cause be forthwith filed by the Clerk.

Pursuant thereto and on consideration of the petition of appellant, filed June 2, 1954 and within time allowed therefor by rule of court, for a rehearing of above cause, IT IS ORDERED that said petition for rehearing be, and hereby is, denied.

Opinion of United States District Court for the District of Hawaii, dated May 3, 1951

In The United States District Court for the Territory of Hawaii

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Civil No. 787

WAIALUA AGRICULTURAL COMPANY, LTD.,
Plaintiff and Cross-Defendants,

vs.

CIRACO MANEJA, et al.,
Defendants and Cross-Claimants.

Opinion and Decision of Court (May 3, 1951) Containing Findings of Fact and Conclusions of Law

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METZGER, J.

Part I.

Statement and Findings

I

Nature of Action, Controversy Involved, and Jurisdiction.

This action arises under the Fair Labor Standards Act of 1938 (the Act of June 25, 1938, 52 Stat. 1060, 29 USC Sections 201, *et seq.*). Plaintiff sought a declara-

tory judgment, and the defendants filed a counter-claim under Section 16(b) of the Act to recover unpaid overtime compensation for work performed by them as employees of plaintiff, and to recover liquidated damages, costs and attorneys' fees.

Following an earlier trial herein, a decision and judgment of this court (reported at 77 F.Supp. 480), and an appeal to the United States Court of Appeals for the Ninth Circuit, this action was remanded to this court for further proceedings by a judgment of the Court of Appeals rendered November 10, 1949 (reported at 178 F.2d 603).

Following the remand, all pleadings heretofore filed in this action were amended by the parties, so as to drop certain parties defendant from the litigation, to eliminate the representative character of the case, and to limit the action to the period from November 20, 1946, to and including September 14, 1947.

Under the amended pleadings, the following issues arise with respect to that period of time:

A. Were the defendants or any of them exempt from the provisions of the Act by virtue of Sections 13(a)(6), 7(c), or 13(a)(2), during all or any workweeks falling within the aforementioned period?

B. Were certain of the defendants, while performing work of repairing and maintaining plaintiff's dwelling houses, and while furnishing related facilities and services to plaintiff's employees and others occupying such dwelling houses, engaged in commerce or in the production of goods for commerce, within the meaning of Section 3(j) of the Act?

C. What, if any, amounts are any of the defendants entitled to recover from plaintiff pursuant to Sections 7(a) and 16(b) of the Act?

These issues are raised by (a) the amended complaint of plaintiff and defendants' answer thereto; and (b) defendants' counter-claim, cross-claim and cross-complaint under Section 16(b) of the Act, and plaintiff's reply and answer thereto. In addition, defendants seek awards of liquidated damages, and recovery of costs and attorneys fees, pursuant to Section 16(b). By its reply and answer, plaintiff seeks to defeat the request for liquidated damages, as well as overtime wages due for the period prior to May 14, 1947, by appealing to the good faith defenses contained in Sections 9, 10 and 11 of the Portal-to-Portal Act of 1947 (Act of May 14, 1947, Public Law 49, c. 52, 80th Cong., 1st Sess., 61 Stat. 84, 29 USC Sections 251-263).

All issues have been presented and tried in a single trial. The evidence consists of a lengthy stipulation to certain facts, the testimony of plaintiff's office manager, the testimony of 22 of the defendant employees of plaintiff, and certain exhibits received in evidence, to which reference will be made later.

This case does not involve waiting time, clean-up time, travel time, or any of the types of activity whose consideration occasioned in part the passage of the Portal-to-Portal Act of 1947. Defendants have alleged, it is not disputed by plaintiff, and it is found by the court, that the work performed by defendants for plaintiff, for which recovery is sought in the counter-claim, was the principal work performed by them, was compensable both under an express contract and under custom and practice within the establishments and places where the defendants performed such work, and was performed during portions of the days with respect to which the same was so made compensable; that all such work was in fact paid for by plaintiff, but the dispute between the parties is whether the amounts so paid were sufficient to discharge plaintiff's obligations under the Act for overtime compensation.

This court has jurisdiction of this action and of the parties hereto pursuant to (a) Section 24 of the Judicial Code as amended, 28 USC Section 1337; (b) Section 274(d) of the Judicial Code, 28 USC Section 2201; and (c) Section 16(b) of the Fair Labor Standards Act of 1938.

Parties and Period of Time Involved.

Plaintiff is a corporation organized under the laws of the Territory of Hawaii on December 14, 1948. This action was instituted on April 9, 1947, by a predecessor corporation to the plaintiff, bearing the same name. On December 14, 1948, plaintiff acquired certain of the assets and business, and assumed certain of the liabilities, of the predecessor corporation, including all rights, interests and liabilities in, or which might arise out of, this action. By stipulation, plaintiff has been substituted as the party plaintiff in this action for the predecessor corporation. All subsequent references to "plaintiff" refer either to the predecessor corporation or to the new corporation substituted herein, depending on whether the matters to which they relate occurred prior or subsequent to December 14, 1948.

Defendants are 42 individuals who were employed by plaintiff during the period from November 20, 1946, to September 14, 1947, inclusive. Each of them appears in this proceeding on his separate behalf only, and in no way as representative of any other persons or legal entities. Unless otherwise specified, each performed his work on the plantation.

Summary of Plaintiff's Business.

Plaintiff operates a sugar plantation located in the District of Waialua, City and County of Honolulu, Island of Oahu, Territory of Hawaii. In 1945, it was the third largest producer of raw sugar in the Territory.

At the present time the plantation grows and produces sugar cane on 9,663 acres of land owned or leased by it. Substantially all of the land now devoted to sugar cane production has been owned or leased by the plantation and used by it for this purpose since 1910.

As of approximately the commencement of the period covered by this litigation, plaintiff had a total of 959 non-supervisory employees.

Plaintiff's business consists of (a) growing, cultivating, and harvesting sugar cane on the lands owned or leased by it; (b) operating a system of railroad transportation over which harvested cane is hauled to plaintiff's mill; (c) processing such cane into raw sugar and molasses at the mill; (d) shipping such raw sugar to a refinery situated in the continental United States, where such raw sugar is refined and subsequently sold under the circumstances later discussed herein; (e) shipping molasses in bulk to the continental United States; (f) operating a series of shops for the purpose of maintaining, repairing and overhauling plaintiff's buildings, machinery, equipment, vehicles, and rolling stock; (g) maintaining mill villages and housing in which plaintiff's employees and their families dwell.

Plaintiff processes no cane except that grown by itself on its plantation. Neither does it directly engage in any sugar refining operation. However, plaintiff and 30 other companies engaged in the production of raw sugar in the Territory, constitute the total membership of an association called California & Hawaiian Sugar Refining Corporation, Ltd. (C & H), a California corporation. C & H is qualified as a cooperative marketing association under the federal Capper-Volstead Act and under the applicable laws of the State of California. During the period involved in this litigation the members of C & H, including plaintiff, were under contract to deliver, and did

deliver, to C & H, all of the raw sugar produced by them in the Territory, except for inconsequential amounts sold for consumption as raw sugar in the Territory.

In this same period, C & H operated a sugar refinery at Crockett, California. Under the mentioned contract, C & H was entitled to process all raw sugar delivered to it by its members, and to sell the refined sugar resulting therefrom, as well as to sell in the form of raw sugar any quantities delivered by the members of C & H. Actually, C & H processed into refined sugar more than 90% of the raw sugar delivered to it by its members, selling the balance as raw sugar.

The proceeds received by C & H from its sale both of refined sugar and of raw sugar, as well as any by-products produced by it, were distributed in the following manner. After first deducting the operating expenses of C & H, the remainder was paid over to the members of C & H, including plaintiff, partly in the form of dividends at 6% on the shares of capital stock of C & H, all of which were owned by the aforementioned 31 Hawaii companies—"substantially in the same proportion as the tonnage of raw sugar which they ship to C & H" (Def. Ex. 2)—and the balance was paid over to the same companies, in direct proportion to the amounts of raw sugar delivered by them to C & H.

Plaintiff's Plantation Operations.

Sugar cane is highly perishable. To avoid serious losses it is processed into sugar, syrup or molasses within a relatively short time after being harvested—usually, as the record shows, the practice of processing is between 4 and 16 hours. It "cannot be stored more than 2 or 3 days without spoiling" (Def. Ex. 3B, p. 36).* It does

* For this reason and because of the great weight and bulkiness of cane as compared with raw sugar, it must be processed within a few miles of where it is grown.

not move into interstate commerce in its natural state. Except for small amounts which are used as seed cane, it is grown for the purpose of producing sugar, syrup and molasses. It is these products, which result from the processing of cane, that become articles of interstate commerce.

Substantially all of the cane-growing land of plantation, its buildings and yard area, and other lands owned or leased by it, but unsuited for cane growing, including a wooded area from which firewood is cut for use for fuel by plantation employees living in the plantation villages, forms a contiguous and compact area. All lands devoted to the growing of cane are managed and operated by plaintiff as an integrated farming unit and single enterprise with identical cropping, cultivation and harvesting practices, and with the same labor and equipment.

The growing and harvesting of cane, its processing in the mill, and the shipping of raw sugar to the refiner, take place continuously for a period of approximately 7-9 months. Annually, the harvesting and processing of cane are wholly suspended for the remaining 3-5 months, for the purpose of completely reconditioning the mill and equipment, and installing machinery and improvements.

Plaintiff's buildings, including the mill where cane is processed into raw sugar, and a number of buildings which house repair shops for the maintenance of field, transportation and mill equipment, warehouses for plantation supplies, and other buildings having functional relation to the entire plantation operations, are centrally located in the lowlands of the plantation in a compact area.

Plaintiff's cane field operations are highly mechanized. Since 1910 there has been a gradual reduction in the number of man days required to produce a ton of raw

sugar on plaintiff's plantation. This reduction was brought about through mechanization and the application of scientific methods. To a large extent hand labor and the use of horse-drawn equipment and vehicles have been eliminated, and motorized equipment substituted in their stead.

The transportation system of plaintiff is also highly mechanized, and this is likewise true of the processing operations in the mill.

There is a high degree of coordination between field operations, transportation, mill processing, shipping, and all other aspects of plaintiff's activities.

> "Operational problems on a sugar plantation are comparable to those of a Detroit factory rather than to those of a large Iowa farm. The Primary objective of the management is to maintain 'belt-line production' of sugar by so scheduling the various field throughout the plantation for harvesting and transport to the mill that full-scale raw-sugar production will be continuous, 24 hours a day. To do this it is necessary to maintain a fleet of large trucks, mechanical harvesting equipment, a system of narrow-gage railways (or other means of transporting cane to the mill), a laboratory for scientific observation to determine the water and fertilizer needs with an organized force of workers to implement these findings, and large pumping stations and gravity systems for controlling irrigation." (Def. Ex. 3B, p. 36.)

During the year 1945, plaintiff's direct operating expenses amounted to one and three-quarter million dollars. Of this sum, manufacturing costs approximated five hundred thousand dollars, and an additional sum of approximately two hundred thousand dollars was expended on transportation, in major part for main line hauling of cane into the mill. The record does not disclose the amount expended for operation of the repair and service

shops, or for maintenance of employee housing and village facilities.

It appears that plaintiff's railroad system was valued at more than three-quarters of a million dollars (Def. Ex. 2).

Activities Occurring From the Time Cane Fields Are Prepared for Planting Up to the Time of Harvesting.

In the preparation and plowing of its cane fields, a so-called "stone boat" sled is used to clear the fields of stones, rocks, and similar obstructions. Concrete irrigation flumes and pipes are moved to their proper location. Sugar cane seed is then planted. The fields are then "ratooned", this being an operation performed after a cane field is harvested to prepare it for the growing of another crop. In the cultivation, herbicides and insecticides are applied, by means of spraying equipment; in the fields, along irrigation ditches and flume areas, and along cane field roads. Weeds are removed, fertilizer is applied to the fields, and water is supplied by a network of irrigation ditches, canals, siphons, concrete pipes, flumes, water storage reservoirs and pumps, all of which plaintiff owns, operates and maintains. Ultimately the cane is harvested, loaded into cane cars on portable tracks in the fields, and then moved to the main line railroad.

Throughout the plantation, plaintiff maintains a network of field roads for the transportation of labor, field supplies and equipment.

Intensive irrigation throughout the year is required for the acreage devoted to cane production. Irrigation frequency is guided by soil moisture samples collected weekly from each field. Approximately 97-98% of the water received by plaintiff is utilized for irrigation of its cane fields. The degree to which water is used by plain-

tiff for irrigation purposes is shown by a tabulation received in evidence. In the year 1940, for example, plaintiff applied 30,548 million gallons; this was a daily average of 84 million gallons. By way of comparison, the city of San Francisco used 65 million gallons daily in the same year (Def. Ex. 3B, p. 43).

Plaintiff also uses substantial quantities of water to supply its mill, to operate locomotives used on plaintiff's railroad, for the domestic water needs of plantation villages and plaintiff's employees living therein, for sale to small farmers whose produce is consumed locally, and for plaintiff's system of fire protection. The amount so consumed averaged two million gallons daily.

Harvesting Operations.

To insure a balanced flow of cane to the mill, harvesting operations are coordinated with the needs and capacity of the mill, and the potential of its transportation system.

Fields ready for harvesting are first burned over, to increase efficiency in removing the cane and to reduce trash carried to the mill. In preparation for burning, fire brakes are cut through the cane by a tractor bulldozer rake. This tears cane stalks from the stools and pushes cane off to the side.

After the cane is burned, the bulldozer rake opens up lines for the laying of portable track. A portable track plow or leveler follows through these lines to make proper beds for the track. Portable track rail cars, loaded with sections of track, are drawn into the cane fields by tractors. Lifting machines hoist the track sections from the loaded cars and lay them on the track beds. Empty cane cars are then hauled from the main line of plaintiff's railroad onto a siding thereof into the field for loading purposes, and are placed into position

for loading. Cane is loaded on the cars by machines, which are cranes equipped with a boom and a finger-like grab; these pull or grab the cane loose from its growing position and load it directly into the cars. Plaintiff owns 9 such caneloading machines. Full cars are hauled out of the field to the main line for transportation to the mill. A carload of cane averages slightly less than 5 tons per car, gross cane.

Cane pieces along the portable track are later picked up by a ground crew and thrown into cars drawn by tractors. Full carts are dumped near the cane loading machines for subsequent lifting into cane cars. Cane dropped in the fields is bulldozed into piles, and these are later lifted by machine into the cars. This operation is referred to as "brooming cane". Where the main line railroad passes adjacent to the cane field, harvested cane is loaded directly into cars spotted on the main line tracks.

Main Line Transportation.

From the time of its organization plaintiff has owned and operated a narrow-gage railroad system. This system is constructed, located and operated exclusively on the plantation. It hauls no cane or freight for anyone other than the plantation. It is used predominantly to haul sugar cane from points where cane cars have been concentrated to the mill. It is also used to haul portable rails and other supplies and equipment from the plantation's warehouses and shop yards to and from the fields, but most of this type of hauling is handled by the plantation trucks. The plantation has a spur track approximately three thousand feet in length running from its mill and warehouses, and connecting with the railroad line of the Oahu Railway & Land Company. This spur track was used by the plantation to deliver box and tank cars loaded with sugar and molasses to the O. R. & L.

Company, and to receive incoming supplies delivered to the plantation by the O. R. & L. Company. The O. R. & L. Company discontinued its operations at the end of 1947. Since that time the outgoing and incoming freight of the plaintiff has been handled by an independently owned and operated trucking company.

The plaintiff's railroad network consists of 56 miles of permanent main line track, hereinafter frequently referred to as "plaintiff's main line railroad", and slightly more than 9 miles of portable track.*

The plantation railroad equipment consists of six 25-ton steam locomotives, one 17-ton steam locomotive, one 12-ton steam locomotive, one 12-ton gasoline locomotive, and one 14-ton diesel locomotive, 200 steel cane cars measuring approximately 11 feet by 6 feet by 5 feet, and 512 wooden cane cars measuring approximately 10 feet by 6 feet by 5 feet.

For the functioning of this railroad system, plaintiff maintains a roundhouse, employs section men to maintain the main line trackage, employs 10 crossing watchmen to protect the public at government road crossings, employs workers to spray the railroad rights-of-way with a herbicide, employs workers who together with field men pick up cane spilled along the railroad rights-of-way, and employs personnel to operate the trains. Six to nine train crews, with an average of seven, are required daily to handle cane and incoming and outgoing freight. A train crew consists of four men, including a locomotive engineer, a fireman, a front brakeman and a rear brake-

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* Portable track laid in the field for harvesting operations lacks proper roadbed for the locomotives. The primary reason for the use of the portable track for harvesting is that permanent track cannot be laid in the field because of interference which would otherwise result in planting and cultivating operations. During the short periods when such track in the fields is in use it is an integral part of the railroad system over which cane cars move directly from the fields to the mill.

man. A cane train averages at least 60 cars, though this number sometimes goes up to 80 or even 90 cars.

Working in the roundhouse are a hostler and an engine wiper, who wash the locomotives and steam boilers, oil and grease the locomotives, fire and steam the locomotives preparatory to the day's operations, and assist in minor repairs to locomotives.

During the off-season, when cane is neither being harvested nor processed, the section men, supplemented by approximately 12 brakemen and 5 firemen, are used in repair and maintenance of main line trackage. Watchmen are used for cleaning and weeding the rights-of-way. Usually one locomotive engineer, two firemen, and three brakemen are assigned to assist the electricians on mill work primarily. One fireman and two brakemen are generally assigned to the welding shop to assist in off-season factory repairs and installation of new equipment. Two more brakemen are sometimes assigned to repair work in the boiling house. One yard engine crew, consisting of an engineer and several brakemen for the diesel locomotive, is maintained during the off-season. Locomotive engineers not otherwise used assist in locomotive repairs.

Mill Operations.

At its mill, plaintiff processes cane into raw sugar and molasses. Raw sugar is there bagged for shipment to the C & H refinery at Crockett, California. Molasses is either loaded for shipment to the continental United States, or stored temporarily in molasses tanks. Bagged sugar and molasses were loaded into railroad box and tank cars of the Oahu Railroad & Land Company, a carrier, which then proceeded with the transportation of these commodities to points of shipment for the mainland.

The term "mill" means the building and equipment of plaintiff used in the actual processing of sugar cane into raw sugar. This includes a cane-cleaning plant and

scales, mill carrier, crushing plant, boiling house, fire-room, power plant, sugar warehouse, molasses tank, and all equipment located therein.

Mill operations commence when loaded cane cars are delivered by locomotive on the plaintiff's main railroad, to the mill yard and moved up to the mill. Here the cane is weighed, unloaded, washed, and as much trash is removed as is mechanically possible. These operations take place in the cane-cleaning plant.

After being cleaned, the cane is moved by mill carrier to the crushing plant, is there crushed, and the juices extracted. Sugar juices are then clarified and crystallized in the boiling house. The chief product, which is raw sugar, is then bagged and shipped, or temporarily stored and later shipped.* Molasses is pumped into a storage tank at the mill, and later shipped.

The cane fiber which remains after the extraction of the juice from the cane stalk is known as bagasse. It serves as an economical source of fuel for the production of power. Bagasse produced at this plantation has no marketable value, but is burned in the fire-room, located in the mill, and produces steam. This in turn is used to drive the mill engines and cane processing equipment, to heat and evaporate sugar juice and crystallize the raw sugar, and to generate electric power at the mill's power plant. Steam used for the latter purpose, after passing through generating machinery, is conveyed through lines for further use in processing operations.

The power plant generates electric power. This, however, supplies only about two-thirds of the power needed by plaintiff, so it purchases one-third of the power used

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* The plaintiff's temporary storage of raw sugar is never motivated by economic considerations, but is due only to the limited number of cars and limited storage space at the port wharves and occasional interruptions in ship schedules.

by it from the Hawaiian Electric Company, Ltd., an independently owned and operated public utility.

There are times when plaintiff's power system generates more power than it has need of. Because of an existing tie-in between its power system and that of Hawaiian Electric Company, on rare occasions plaintiff feeds back power into the system of Hawaiian Electric. Credit for such power is given to plaintiff in the same manner as though a sale had occurred.*

Power generated by plaintiff, as well as that purchased by it, is distributed by transmission lines to all the various operations on the plantation, and also to several non-plantation users living in the plantation community. The total amount of power used by non-plantation users is about one-half of one per cent of all the power distributed by plaintiff. None of it is used for or in connection with the production of goods for commerce, or to operate any instrumentalities of interstate commerce, or transmitted into interstate commerce.

In the off-season, when the steam and electric power equipment in the mill are overhauled, plaintiff generates no electric power, purchasing all the power it needs from the Hawaiian Electric Company.

Weekend Shutdown In the Mill

Production in the mill operations is keyed basically to a 6 day week with continuous and around-the-clock operations divided into three 8-hour shifts. The mill stops grinding cane at 2 p.m. Saturday and starts up at the same time on Sunday. The cessation of grinding operations on Saturday does not, however, result in the stopping of all mill operations. As shown later, in the descrip-

* Power is not fed back to the Hawaiian Electric lines for the purpose of selling power but only because it is a necessary, convenient and economical method of disposing of the excess power.

tions of work performed by various defendants, the week-end shutdown period does not extend for 24 hours in regard to the boiling house, the fireroom, and the operations of the power plant.

The weekly shutdown for mill operations is necessary to perform cleaning and minor repair work.

Off-Season

Although sugar cane can be and is grown the year round in the Territory of Hawaii, efficiency of operations dictates the closing down annually of sugar mills so that extensive general repairs, reconditioning and installation of improvements can be had. That part of the year when the mill is shut down for repairs is termed the "off-season". While the off-season usually lasts 3-5 months, in the period covered by this litigation it extended only from December 22, 1946, to and including February 9, 1947.

During the off-season, plaintiff conducts no harvesting, cane transportation, or cane processing operations. Field operations continue.

Most of the off-season repair work in the mill is done by employees who, during the grinding season, operate the mill machinery. However, some of this repair work is done by employees of the machine shop, welding shop, blacksmith shop, carpenter shop, and electric shop.

Just as many man-days of work are performed during each 24-hour period in the mill during the off-season as during the grinding season.

Repair and Service Shops

Both field and mill operations necessitate the equipping and maintaining of complete service shops for prompt minor repairs and emergency work and major overhaul.

Plaintiff operates and maintains a number of repair and service shops which are physically distinct from the mill, housed in separate buildings, and located in an area extending up to 300 feet from the mill building. These shops employ upwards of 100 men, plus necessary foremen and supervisors. These shops are: machine shop, welding shop, blacksmith shop, tinsmith shop, caneloading machine repair shop, tractor repair shop, garage, electric shop, carpenter shop, paint shop, plumbing shop, and roundhouse.

1. *Machine Shop*

The machine shop is staffed by 8 employees working under supervision of a machine shop foreman. Practically all of plaintiff's machining work, except heavy work required by the mill, railroad and shops, is done in the machine shop. The grinding of crankshafts for cars, trucks, tractors, and cranes, the machining of emergency parts for such equipment, and machine work on irrigation pumps are performed in this shop. Major locomotive repairs are made by machine shop personnel working with a heavy crane in the welding shop.

Approximately 46% of all machine shop work is for the mill, and 50% for other service departments, including repairs to steam engine driven irrigation pumps. During the off-season, mill work done by the machine shop accounts for from 85% to 90% of the total man hours' work performed.

Work in the machine shop is fairly uniform throughout the year, with peaks in cases of emergency mill repairs and during the mill off-season. Locomotive overhaul is carried out to a limited extent during the grinding season to relieve machine shop off-season work. Steam engine driven water pumps are scheduled for overhaul after the mill overhaul has been completed and after grinding operations are resumed.

A large portion of the work done by the machine shop personnel is performed within the shop, utilizing shop tools. These tools include lathes, hydraulic press, drill press, planer, boring machine and crankshaft grinder. From time to time machine shop personnel are called into the mill to perform repairs, regrooving of mill rolls, and such other work as cannot be expeditiously handled by mill workers.

2. *Welding Shop.*

This shop employs 5 men under supervision of a welding shop foreman. About 46% of its work is for the mill. In the off-season, welding shop work for the mill represents approximately 90% or more of the total man-hours. Most of the welding repairs to mill equipment are made in the shop, although personnel are sometimes dispatched to the point of breakdown.

Steel cane car repairs are made alongside the shop building by the shop personnel. Welding shop employees also operate pipe rolls located in the pipe rolling shed. The pipe which is rolled is generally irrigation pipe 18 inches in diameter or larger. Welding of this pipe is performed by the shop welders. In this work the welding shop employees are assisted by employees from the blacksmith shop or caneloading machine repair shop.

Welding shop equipment consists of heavy pipe rolls, several sets of acetylene and cutting outfits, acetylene generators, and both stationary and portable welding generators.

3. *Blacksmith Shop.*

This shop employs 2 blacksmiths and 2 helpers under supervision of the caneloading machine repair shop foreman. About two days each week are spent by the blacksmiths and helpers on mill work, consisting principally

of constructing and reconditioning of cane carrier leveling and preparation knives. Cane car repair work, such as straightening of bars and channels, and repair of tractors and caneloaders, and field implement work, occupy the great percentage of the man-hours in the shop. The work of this shop is uniform throughout the year. Equipment in this shop includes 2 forges, an electrically operated hammer, and a variety of small tools.

4. *Tinsmith Shop.*

This shop employs a tinsmith journeyman and 2 helpers. Mill repair work here is negligible, although light sheet steel work, including maintenance and repair of roof gutters and down pipes, is performed by the shop personnel. Repairs of auto, truck, tractor and caneloader radiators are performed by the shop personnel.

The main work of this shop is the making and reconditioning of tin irrigation scoops. These scoops are used in quantity in the field for the purpose of deflecting water from concrete irrigation flumes to field irrigation lines.

5. *Caneloading Machine Repair Shop.*

Twelve employees and a foreman work here. They perform all major repairs and overhaul of caneloaders, grabs and miscellaneous field equipment. Men from this shop are occasionally called upon to assist in emergency mill repairs. They also go into the field to repair caneloading machines during the course of harvesting operations.

An important function of this shop is the construction of auxiliary field equipment, such as sub-soilers used in plowing, cane line reshapers used to maintain irrigation water lines in the field, and portable track line leveler attachments used in leveling the lines for laying portable tracks. Repairs on such auxiliary field equipment are

also made in this shop, with assistance from personnel of the tractor repair shop.

In the off-season, at least 8 of the 9 caneloading machines are completely dismantled and reconditioned. The 9th machine is reconditioned after harvesting has been resumed. In the off-season, 10 to 12 operators of caneloading machines are brought in to supplement the regular employees of this shop, and to assist in overhaul. Five cane grabs are overhauled and reconditioned during the off-season, and all other cane grabs are repaired. During the harvesting season, 3 new cane grabs are usually built.

Equipment in this shop includes 4 portable welding generators, and 3 portable welding generators mounted on trucks for field repairs. A hydraulic press, overhead crane, motor-driven grinders and a variety of small tools complete the shop equipment. Four welders in the shop take care of welding repairs in the field, and repairs to, and building of, new field equipment.

6. *Tractor Repair Shop.*

Seven employees normally work here, but in the off-season this number is supplemented by 12 to 15 tractor operators who are brought into the shop from the fields, to assist in repairs. All tractors used in the harvesting field are overhauled in this shop during the off-season. Tractors used for towing cane line reshapers are also overhauled during the off-season. Other tractors which cannot be overhauled during the off-season are scheduled for overhaul at a later date. This may mean that 6 or 7 out of a total of 48 tractors are left for operating season overhaul. Tractor engines are overhauled at regular periods.

Employees of this shop are sometimes dispatched for repair of tractors in the fields. They also assist in repair

of field implements in the caneloading machine repair shop.

7. *Garage.*

Personnel employed here numbers 24. Primarily work of the garage is to maintain and keep in repair plaintiff's 98 motor vehicles, consisting of 18 passenger vehicles, 48 pick-up trucks up to one ton, 27 heavy trucks from 1½ to 7 tons, 1 motorcycle, 2 fire trucks, and 2 panel trucks. Sixty-four of these vehicles are assigned to operations in the field, 12 to the repair and service shops, 1 to the mill, 1 to the hospital, 2 to the plaintiff's retail store, 7 for administration, 2 are fire trucks, and 9 to the motor pool.

Overhaul of cars and trucks is scheduled throughout the year, except that pick-up trucks used by the harvesting men are overhauled during the off-season. Truck drivers are not used to assist in truck or auto repairs, since there is generally a spare truck to drive when others are being repaired. All such work is performed by the garage mechanics.

Shop equipment consists of 4 overhead cranes, a hoist, valve grinding machine, brake drum lathe, boring machine, tire tools, and a variety of special tools.

Complete servicing equipment is also maintained, together with necessary personnel. Seven full-time employees and one part-time employee perform the lubricating and washing of vehicles. One employee dispenses gas and oil at the yard service station. Six persons are employed as helpers to garage mechanics when there is no service work.

Field service covers the daily lubrication of all equipment and the replenishing of fuel tanks. Tractors, caneloading machines, portable air compressor, diesel and

gasoline locomotives, and all field equipment are serviced daily by a total of 6 men. Two completely equipped service trucks manned by 2 men each service all field equipment, except that in the harvesting fields. In the latter case, a two-wheel trailer, tractor-drawn, is kept in each of the two harvesting fields. Oil, gasoline, diesel oil, greases and water are carried on the trailer together with power-operated grease guns. One man assigned to each trailer services the cranes and tractors in the harvesting fields. In this way service work can be done during lunch hour and slack periods without serious interference with harvesting operations.

8. *Electric Shop.*

Fifteen employees work in this shop. Three of these are mill electricians who divide their time between the mill and the shop, working two weeks in the former, then one week in the latter. The shop maintains electric pumps and transmission lines and performs domestic wiring repairs, including wiring of houses, and the building of new electrical appliances. Employees of this shop perform necessary work on electrical machines located in the other shops.

In addition to mill repair work done by the employees assigned as electricians to the mill, electric shop personnel may assist them in case of major electrical repairs required. About half of the work in this shop is for the mill. During the off-season, about 70% of the work is for the mill.

9. *Carpenter Shop.*

Twenty-five carpenters and two supervisors comprise this shop's personnel. They perform all carpenter work on the plantation, which includes construction of mill scaffoldings, construction and maintenance of railroad

trestles and wooden gates for flumes, and construction and maintenance of cane cars. In addition they perform necessary maintenance work on the plantation buildings and houses. They also install and maintain steel and concrete pipe lines and siphons. Miscellaneous construction, such as construction of tool lockers, scrapers and strainers, is performed in this shop. Field work, including work on the flumes, railroad trestles, siphons and pipe lines, accounts for about 25% of the work of the employees. Mill scaffoldings and mill building repairs, construction of tool lockers, scrapers and strainers, account for another 10%. Maintenance and repair of plaintiff's buildings and housing account for another 45%. The remaining 20% of the work consists of construction and repair of cane cars. The work is uniform throughout the year, with little change between grinding season and off-season. During the off-season, additional men averaging from 10 to 15 may be brought in from the fields to assist in cane car overhauling and general carpentry work.

10. *Paint Shop.*

Here are employed 5 painters and a supervisor. They perform all painting work on plaintiff's buildings, including housing, and they also occasionally paint siphons and railroad trestles. As a general rule, they do not paint for the mill, this work being done by mill employees. Most of the time of the paint shop crew is devoted to painting of plantation buildings and housing throughout the year. During the off-season, an average of two additional employees brought in from the fields may assist in the work of this shop.

11. *Plumbing Shop.*

Six plumbers and one supervisor work here. They perform all plumbing work on the plantation, including the construction and maintenance of sewer and water

systems and plumbing for buildings and housing. Approximately 10% of the time is devoted to mill plumbing work, 15% to field work and the remainder to buildings and housing. Assignments vary little throughout the year. During the off-season, an average of two field employees may be assigned to the plumbing shop as helpers.

12. *Roundhouse.*

Reference to the roundhouse has already been made. It regularly employs two men in the shop, who perform the servicing, cleaning and firing of plaintiff's locomotives. Additional employees are occasionally assigned to this shop to assist in minor locomotive repairs.

Laboratory.

In a separate building, plaintiff operates a laboratory. Various chemical tests are made by the laboratory personnel in the course of all field and mill operations. This work is performed under the supervision of a chief chemist with the assistance of 13 chemists, testers and samplers. By performing careful analysis of various kinds relative to the cane and materials in the course of growing, cultivating and harvesting of cane, and the extraction of the sugar juices, all operations are controlled pursuant to scientific methods.

Determinations of the cane fiber in each field, or variety of cane, are made during each shift. Figures obtained are used in calculating bagasse weights, field distribution and extraction percentages.

Cane leaf analysis is made from samples of cane tops brought in each day and analyzed for green weight mixture, total sugars, nitrogen, potash and phosphate.

Daily tests are made for a variety of other purposes. Tests are made to determine the amount of field trash in

harvesting brought to the mill. Continuous samples are taken from the feed roller of the first mill each hour, and also at each change of harvesting, and records of ratios of cane to available sugar are obtained. Extracted juices are sampled to determine the sugar obtained from cane by the milling process. Extracted juices are used to calculate the weight of bagasse. Every three hours samples from clarified juice are taken, to reveal the relative amount of solids being removed by the lime and heat treatment of juices. Purity of syrup is checked. Samples of bagasse are taken every two hours, and ash determinations are also made twice daily, to determine the influence of different fields on the fireroom. Mixtures of sugar and molasses are tested to determine the amount of sugar lost in the filter cake.

Tests are also made of the mill boiler water, locomotive boiler water, steam pump boiler water, and pump water. Pump water from electric pumps and well water are sampled once each month. Wash water from the cleaning plant and condenser water are also analyzed each shift.

Concrete Products Plant

In a separate building, plaintiff operates its own concrete products plant. Six men ordinarily staff it, although the number varies from 4 to 10. Work is usually performed on a single shift basis, but occasionally two shifts are maintained.

This plant is engaged primarily in producing concrete irrigation flumes and water supply pipe. It also makes blocks, footings, sidewalk slabs and various other incidental concrete products required by the plantation. Crushed rock used in the manufacturing process is purchased locally, but from 80% to 90% of all cement used is obtained from the continental United States. The work

consists of setting up forms, mixing and pouring concrete, removing the previous day's products and arranging them in storage. Cement used is stored in cars which are set on the siding near the plant, or the cement is stored in the cement shed as part of the inventory of general supplies warehousing. In the latter case, unloading of cement is done by the warehouse personnel. Various activities requiring the flumes, pipe and other products receive them direct from the storage area where the products are stored.

The operations do not have any off-season. During the off-season, however, additional personnel may be brought in from the fields. In 1946, the plant produced approximately 46,000 concrete pieces, including flume sections, pipe and other products.

Storage of Supplies

Materials and supplies purchased for plantation operations are warehoused or stored in several separate buildings located in the plantation buildings and yard area. Value of supplies on hand averages $500,000. The total value of goods procured during a year, including stock and special order materials, averages over $1,000,000.

Most of the materials received were shipped to the plantation from Honolulu on the O. R. & L. Purchases may be either local or by order and direct shipment from continental United States. Freight received is placed in the proper warehouses by the warehousing personnel. In almost all cases railroad sidings permitted placement of the O. R. & L. cars next to the warehouse receiving the materials. The warehousing personnel is not responsible for, nor does it engage in, delivering materials to the various operations or shops.

The principal buildings in which the supplies and materials of the plantation are stored are the general sup-

plies warehouse and the heavy supplies warehouse. They house electrical goods, building hardware, paints, window screening, tractor and caneloading repair parts, copper tubing, pipe stock, metal shapes stock, galvanized sheeting, steel sheets and many other items.

The oil storage warehouse contains lubricants and a limited amount of paint.

Gasoline, fuel oil, diesel oil and kerosene were discharged directly from the O. R. & L. tank cars into storage tanks.

Most of the automotive parts and tractor, caneloading and miscellaneous parts are stored in the garage.

Cement is stored in a separate warehouse. Lime is stored in the mill in the lime room after being unloaded by warehousemen.

Lumber is stored in the open lumber yard adjoining the general supplies warehouse. Herbicides are also stored there.

Fertilizers are usually trucked directly from railroad cars to the field as needed; but if temporary storage is required, they are placed in the sugar warehouse.

The warehousing operations are handled as one unit under a warehouse superintendent with 13 employees. Five clerks perform the bookkeeping and handle accounts. The remainder of the warehouse personnel is employed in the unloading and storing of stocks and materials, keeping stock record cards and taking inventory.

Main Administration Office.

The main administration office is located about 1500 feet from plaintiff's buildings and yard area. The manager, assistant manager, and staff assistants have their offices here. Employees include the cashier, bookkeeper,

head timekeeper, 6 assistant timekeepers, 8 clerks, 5 stenographers and typists—a total of 22 employees working under the office manager and his assistant. Four timekeepers keep the time of the field employees; 2 keep the time of the shop, store, mill, hospital and village maintenance employees. These offices are where payroll records are maintained, and salaries and services paid.

Also housed in this building are the offices of the civil engineer, one assistant surveyor, 2 junior surveyors, and 2 rodmen, who work alternately in the field and in the office. There is also a draftsman employed in this office. The agriculturist and industrial relations sections are also located in the same building.

Stables.

The plantation has one main stable near the plantation buildings and yard area. It uses 38 horses and mules. Horses are used by the harvesting overseer to ride in the fields. Pack mules are used upon occasion to pack seed, fertilizer, broken concrete flumes and other things in and out of the cane fields. The plantation has several feeding stations for horses and mules where they are kept temporarily while work is being performed in a particular area. Three employees are assigned to the work of the stables.

Firewood.

Plaintiff maintains a splitting station in the mill yard. This is equipped with saw and splitting machinery generated by electric power. Firewood, cut by plaintiff's employees at various places on the plantation, is brought to the station to be sawed and split into pieces of appropriate sizes. The uses of such firewood are: sale of firewood to employees and pensioners, for cooking and heating purposes; for heating water at the village bathhouses;

and for starting small boilers and heating walls within the furnaces and pumps used to supply water for irrigating cane fields and for domestic and other uses in plantation villages.

Macadamia Nut Trees.

Macadamia nut groves are operated by plaintiff in an area approximating 121 acres. Such area is not suitable for sugar cane. During the period covered by this litigation, the trees had not yet reached maturity and no nuts were harvested. A nursery for cultivation of young macadamia trees is maintained on the plantation.

Plantation Villages.

At the time plaintiff was originally organized, there was no established community housing, or other facilities, in or near the area which plaintiff proposed to devote to the production and processing of cane. To establish a stable labor supply and house it at places convenient to plaintiff's purpose, plaintiff undertook to create a community, and to supply housing and other necessary services and facilities for its employees. Plaintiff constructed houses, developed services, and built up and established various facilities to serve the needs of permanent living, in plantation villages, of its required number of employees and their families. This was done over a period of years, resulting in the development of Waialua village and several small villages.

Waialua village has all the physical and visual characteristics of an established community and is similar to a typical small town of a farming community center. The area is crisscrossed with government roads and roads constructed and maintained by plaintiff. The community offers the usual services and typical commercial establishments to be found in any small town. There is a

company store, or retail store, with two branches; an automobile service station; and a hospital. These are owned and operated by plaintiff for plantation employees and their families and non-plantation persons. Plaintiff also built in this area two gymnasiums, one clubhouse, one athletic field, one beachhouse, one swimming pool, and two tennis courts, which are available to an athletic association, membership of which is composed both of plaintiff's employees and others in the community.

Additional services and establishments located in the community, which are independently operated, include ten general stores, two restaurants, two fish markets, one candy store, one hardware store, one clothing store, four barber shops, one beauty shop, one photographic studio, two automotive service stations, two motion picture theaters, and one bank.

> "It must be remembered that the whole plantation area, including the town, is owned by the plantation company, and although there are frequently many shops, such as drug stores, tailor shops, shoemaker shops and the like, that are privately operated, they rent their sites from the plantation and can remain only as long as the plantation permits them to do so. Anyone on any part of the plantation is a trespasser unless he has the permission of the management to be there. * * *" (Def. Ex. 3A, p. 71.)

Also located in the village are a post office, public library, five churches, one intermediate school, one high school, and one day-care center operated by the territorial school system.

For many years, plaintiff's employees occupied plaintiff's dwellings pursuant to a system of perquisites. Under this system, employees received housing, housing maintenance, water, firewood and kerosene fuel, electricity, medical care, recreational facilities and various maintenance services, including garbage disposal and street clean-

ing, as a part of their regular compensation as employees of plaintiff. This system was abolished by an agreement dated November 19, 1946, between plaintiff and the International Longshoremen's and Warehousemen's Union, Local No. 145-7, which acted as collective bargaining representative for most of plaintiff's non-supervisory employees. As part of the change thus inaugurated, the value of the perquisites previously allowed to employees was converted, at scheduled rates, into cash wages to be paid by plaintiff by way of wage increase, and thenceforth the employees commenced to pay cash, at scheduled rates, as non-employees do, for the continued furnishing by plaintiff of the aforementioned facilities and services, except that no charge, either to employees or others, was designated for garbage collection, sewage disposal, fire protection, maintenance and cleaning of village roads and similar village services, which continued to be provided by plaintiff. Neither was any charge designated for continued use of parks, playgrounds, plaintiff's clubhouse and gymnasium and recreational facilities generally.

An undisclosed number of plaintiff's dwelling houses are not equipped with tub or shower facilities. For the inhabitants thereof, plaintiff maintains bathhouses. From November 20, 1946, when perquisites were terminated, until April 30, 1947, no charge was made for use of the bathhouse, except as this was included in the rent paid by employees for the dwelling houses. Commencing May 1, 1947, and throughout the balance of the period covered by this litigation, plaintiff instituted a system of charges for use of the bathhouses: 50¢ per family per month, and 25¢ per month in the case of a single man without dependents.

At the present time, the dwelling houses owned by plaintiff number 820, all located on the plantation. Most of them surround the buildings and yard area located

near the mill. These houses, together with the business establishments of the community, constitute the village of Waialua. There are 335 houses which are scattered over the plantation, but these too are located in clusters and form small villages.

No employee covered by the existing collective bargaining agreement, including each employee defendant herein, is required as a condition of employment to live on the plantation or in plantation houses or to use any service or facility that the plantation may be in a position to render its employees. The relationship that exists between the plantation and its employees who live in plantation houses is that of landlord and tenant. However, of the total number of 959 non-supervisory employees of plaintiff, only 16 live off the plantation in houses not supplied or owned by plaintiff. The remaining employees and pensioners, together with their families, an aggregate of 2952 persons, all inhabit dwellings owned by plaintiff and generally located in Waialua village, or one of the other plantation villages owned by plaintiff. Plaintiff also rents to non-employees, totaling 421, dwellings not occupied by employees of plaintiff. Some of these persons work off the plantation altogether: others are persons who own, operate or are employed in the independently controlled businesses located in plaintiff's plantation villages.

The relationship between an individual's employment with plaintiff, and his occupation of a company-owned house, is shown, as testified to by 22 of the defendants, in the following tabulation:

Defendant	*How long employed by plaintiff*	*How long has lived in house owned by plaintiff*
Claunan	20 years	20 years
Crisostomo	26 years	26 years
Cumlat	Over 10 years	20 years
Faria	40 years	44 years; bought own home in June, 1950
Fujiwara	12 years	Lives with her family, which has occupied company-owned house for over 30 years.
Hayashi	Over 15 years	25 years
Holmberg	23 years	(Not testified to)
Izawa	22 years	36 years
Kobota	23 years	23 years
Koshiwabara	26 years	26 years
Lorenzo	14 years	14 years
Maneja	23 years	23 years
Mori	16 years	34 years
Oato	14 years	30 years
Pacheco	7½ years	27 years
Reyher	25 years	29 years
Robello (S)	28 years	45 years
Sunihara	20 years	26 years
Takata	20 years	39 years
Tanaka	11 years	All his life; was born in company-owned house
Watanabe	17 years	5 years
Yamada	24 years	All his life; was born in company-owned house; father was employee of plaintiff.

Plaintiff has established a fire protection system at the village of Waialua, and as part of that system operates two fire trucks. It also maintains fire hydrants in and about the village, the mill, various buildings in the yard area, and at various other locations.

There is a cemetery, located on plaintiff's property, for its employees and their families.

Prior to the abolition of the perquisite system, employees of plaintiff performed the work of maintaining and keeping in proper repair the dwelling houses owned by plaintiff, and the village area, and in supplying the usual services necessary to the operations of a community.

This has continued without change. Under the mentioned collective bargaining agreement, plaintiff expressly undertakes to provide dwelling maintenance and repairs, and village services; and in this connection, not "to make housing a profit-making venture, as such."

Organization of Plaintiff's Plantation.

At all times involved herein, plaintiff has been a member of the Hawaiian Sugar Planters' Association (HSPA), an organization of Hawaiian sugar-producing plantations. The association publishes a manual, portions of which were received in evidence as Defendants' Exhibit 2. Major enterprises of the association, as set forth in this manual, are quoted in a publication of the United States Department of Labor, entitled "The Economy of Hawaii in 1947", Bulletin No. 926, prepared and transmitted to the Congress of the United States pursuant to a requirement contained in the Organic Law of the Territory of Hawaii, 1900, as amended April 8, 1904, 33 Stat. 164. A copy of the publication was received in evidence as Defendants' Exhibit 3B. An earlier report of the Department of Labor, also rendered pursuant to the provisions of the Organic Law of the Territory, was published under the title, "Labor in the Territory of Hawaii—1939", Bulletin No. 687, House Document 848, 76th Cong., 3rd Sess. A copy of this report was received in evidence as Defendants' Exhibit 3A.

As described in the manual issued by HSPA, its functions are these:

> "The Hawaiian Sugar Planters' Association is an organization of plantations and individuals united for the purpose of cooperative improvement of the island sugar industry as a whole . . . The association's major enterprises are divided into the following departments: Experiment station, bureau of labor and statistics, labor saving devices committee, boiler in-

spection committee, public relations committee, labor relations committee, legislative committee.

"The association acts as a clearinghouse for all activities of the industry, making possible the freest and quickest interchange of information among the plantation executives. It maintains an office in Washington, D. C., which handles all relations of the Hawaiian sugar industry with Government departments and the Congress." (Def. Ex. 3B, pp. 34-35.)

This statement of the functions of HSPA is supplemented as follows:

> "The plantations are organized in an association which has planned for the Hawaiian sugar industries as a whole and which has developed the whole framework of economic relations necessary to their existence on an industry-wide basis, including shipping, the purchase of fertilizer, equipment and other supplies, the development of mainland refineries and markets, the supervision of management labor policies, the maintenance of research laboratories and the formulation of common programs of action for combating plant diseases, insect pests, and soil problems." (Def. Ex. 3B, p. 33.)

A further aspect of plaintiff's organization is found in its relationship to Castle & Cooke, Ltd., an agency or factor with which it is connected (Def. Ex. 2). Concerning the relationship that exists between plantation and factor, the HSPA manual declares as follows:

> "While each of the 36 plantations in the Hawaiian Islands is a corporate entity, all their affairs, except the actual operation of sugar growing, are centralized in what are known as factors, general agents offering a multitude of services to their clients. There are five principal factors: Alexander & Baldwin, Ltd., American Factors, Ltd., C. Brewer Co., Ltd., Castle & Cooke, Ltd., T. H. Davies & Co., Ltd." (Def. Ex. 3B, p. 35.)

The functions of the factors are summarized as follows in the HSPA manual:

> "Financial.—All fiscal matters of the plantations are handled by specialists in the offices of the factors. Moneys are received and disbursed, tax statements prepared, water and land rents paid or received, surpluses invested, or deficits advanced.
> "Experimental.—Engineers and other technicians are constantly seeking ways to improve the output of the various client plantations.
> "Shipping.—All the multitudinous detail of shipping huge quantities of sugar by water to the mainland is in the hands of the factors.
> "Merchandising.—Through their mainland buyers, the factors provide a steady flow of needed merchandise to plantation stores and to the plantations themselves. Because of the size of their operation, everything a plantation and its personnel need is provided at a minimum cost." (Def. Ex. 2)

The significance of the factor system is stated as follows:

> "The long-run result of the agency system was thus to deprive the plantations of their independence and to transfer control to the factors, a control which has been further unified by the coordination of policies and planning in the central offices of the Hawaiian Sugar Planters' Association." (Def. Ex. 3B, p. 35).

These developments, as well as many other aspects of plaintiff's operations, would seem to be unique to the Territory of Hawaii.

> "In the sugar-producing areas of Louisiana, Puerto Rico, and Philippines, and the sugar beet States, a farming system had been established before the development of the sugar industry. As the farmers in those areas already owned the land, sugar production grew along the lines of the established farming system.

> "The Hawaiian sugar industry, on the contrary, began on land which was undeveloped. • • • The land tenure system in Hawaii is different from that in any other part of the United States. It is a complex outgrowth of the feudal system which existed before annexation, under native Hawaiian royalty." (Def. Ex. 3B, pp. 32-33.)

The typical Hawaiian sugar plantation has been described as a "small world in itself" (Def. Ex. 3A, p. 70), whose "structural organization and functioning • • • is not unlike that of an army, with its clear cut lines of authority and its careful program for attaining given objectives" (Def. Ex. 3A, p. 14).

In immediate charge of plaintiff's plantation is its plantation manager, who is shown in a chart appearing under the designation "Plantation Organizations" in the published manual of HSPA (Def. Ex. 2), to have over-all control of all plaintiff's operations on the plantation, including conduct of plaintiff's villages. The designation of the manager, and the authority exercised by him, have been described as follows:

> "The manager of the plantation is appointed by the controlling 'factor' or agency. He has wide authority over the plantation and the mill and exercises a considerable influence over all community activities. • • •
>
> "The plantation manager was the chief official and central authority on all aspects of plantation life. In addition to his technical knowledge regarding sugar production, he had final responsibility in the direction and operation of sewerage and water system, of the fire-protection systems, police force, the railroads, and performed many of the functions that a mayor would perform. He even sat as an informal judge on cases involving minor disturbances and petty larcenies." (Def. Ex. 3B, pp. 36, 39).

Departmentalization of Plaintiff's Operations.

Plaintiff maintains an elaborate system of keeping detailed records of all its costs and expenditures. All pumps, locomotives, trucks, tractors, machines and implements of machinery are given identification number, and a record is made of the hours of work performed in their maintenance, repair, and utilization. For each employee a daily timesheet is kept showing in detail what his work consisted of, and to which operation or piece of equipment it pertained. This information is transferred to a weekly time record, which also carries data concerning the employee's rate of pay for the jobs performed by him and his total compensation for the week By use of a further series of numbers, plaintiff records whether a given piece of work represents a capital improvement or a running expense charge.

It appears from the testimony of plaintiff's office manager (Tr. 43-53) that its practice for nearly 20 years has been to keep separately identifiable sets of employee records for its several departments. The main departments were described by him as follows:

1. Service Department, which includes the railroad and truck operations, and the various shops: ". . . such as the track shop (section repair shop), the P & H shop (caneloading machine repair), the welding shop, machine shop, paint shop, electric shop * * *".

2. Factory Department, which covers employees of the mill, commencing with "the employee who, when the cane car comes alongside the mill, weighs it and participates in the job of releasing the cane from the car into the container, the conveyor," and ends with the loading of sugar into freight cars or the warehouse adjacent to the mill.

3. Warehouse Department.

4. Field Department, which embraces "preparing for plowing, plowing, planting, ratooning, cultivating, irrigating, fertilizing, * * * up to the time that the cane was put on the main line of the plantation to take to the mill * * * in other words, where the permanent transportation line took over."

5. Village Facilities Department, covering painters, plumbers, carpenters, and others who repaired, maintained and serviced plaintiff's villages, and the dwellings located therein and occupied by plaintiff's employees.

In addition to these main departments, there are a number of others, also separately maintained. These were identified as the office department, laboratory, civil engineering, hospital, truck department, and agricultural control and research.

The foregoing lengthy statement of the extent, nature, and methods of operation of this large agricultural industrial enterprise is culled from testimony and largely from a detailing written stipulation between the parties of 771 pages, to which is attached a printed contract between the company and ILWU Local 145, Unit 7, together with numerous maps, charts, and tabulations, all of which is a material part of this trial.

This corporate enterprise was organized over a half century ago and has shown continuing expansion and development. With the exception of a few years, it has been quite profitable to its agents and shareholders.

Part II

Commerce Coverage.

The activities of plaintiff described above constitute the operation of an industry which is engaged in commerce and in the production of goods for commerce. In-

cluded in these activities are a number of separate and distinct enterprises appropriate to the production of sugar and molasses under the many and unique circumstances out of which plaintiff's operations have developed and taken form. In the conduct of these enterprises, plaintiff has assumed a variety of functions including those of farmer, carrier, manufacturer, shipper, and operator of village communities. Plaintiff is, and the court finds it to be, subject to the provisions of the Fair Labor Standards Act.

Coverage under the Act for employees, so as to entitle them to the benefit of minimum wage protection, and payment of overtime for hours of work in excess of 40 per workweek, depends on whether they themselves are engaged in commerce, or in the production of goods for commerce (Sections 6(a) and 7(a) of the Act). Whether an employee is to be held covered as one engaged in the production of goods for commerce, depends on whether he was employed either (a) in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods; or (b) in any process or occupation necessary to the production thereof (Section 3(j) of the Act). By Congressional amendment in 1949, the words "closely related" have been inserted in the aforementioned section before the word "process", and the words "directly essential" have been substituted for the word "necessary"; but this amendment was not made retroactive, and has no application to the issues of this case.

Plaintiff does not dispute that its employees, with the exception of a single group, are engaged in commerce or in the production of goods for commerce, within the meaning of the Act. The exception referred to relates to the work of certain employees who perform the work of repairing and maintaining plaintiff's dwelling houses, and furnishing related community facilities and services to

those who occupy such houses, these being in the main employees of plaintiff. As to such maintenance and repair employees, the contention of plaintiff is that, while so engaged, they are not in any process or occupation necessary to the production of goods for commerce. Determination of this aspect of the case is deferred to a subsequent place in these findings. It is appropriate to find at this point, and it is found by the court, that all activities of the defendants other than those concerning which the issue of coverage under Section 3(j) is raised, are and have been within the coverage of the law, such employees being either engaged in commerce or in the production of goods for commerce.

Recovery under the Act has two aspects. An employee is excluded if his activities are such that he is engaged neither in commerce, nor in producing goods for commerce (or engaged in an occupation necessary to production). On the other hand, an employee may be covered by the Act because he is engaged in the production of goods for commerce or in an occupation necessary to such production, but may not be entitled to the overtime protection of the Act because of the applicability of one or another of the exemption provisions. In this case, plaintiff relies on the following exemption provisions: Section 13(a)(6) (agricultural activity), Section 7(c) (sugar processing), Section 13(a)(2) (retail or service establishment) and, in one instance, Section 13(a)(1) (administrative or supervisorial activity).

The record shows that in numerous weeks various defendants worked for hours beyond 48, and in all such instances, hours of work beyond 48 were compensated at overtime rates; this includes employees engaged in agricultural activities. Overtime was also paid for hours in excess of 8 per day, for work on certain designated holidays, and when an employee was called to work on his

scheduled day off. Since 1943, office and warehouse employees have received overtime for hours excess of 40 per week; and during the off-season, overtime has been paid for hours in excess of 40 per week to mill and shop employees.

The recovery of overtime pay sought in this action by defendants is limited to hours in excess of 40 per week, up to and including 48.

Agricultural Activities.

Plaintiff contends that all of its employees are employed in agriculture, as the term "agriculture" is defined in the Act, and are therefore exempt from the entire operations of the Act, pursuant to Section 13(a)(6) thereof. The definition of "agriculture" contained in Section 3(f) is sufficiently broad to cover every operation of preparing the soil, cultivation, growing of the sugar cane, harvesting, and any practice performed by a farmer or on a farm either as an incident to or in conjunction with such farming operations, including preparation and delivery to market where this is done by farmers. An employee is therefore exempt from the protection of the Act by virtue of Section 13(a)(6) if, but only if, his work falls within the specific language of Section 3(f). Such, too, has been the interpretation expressed by the Administrator of the Act (Interpretative Bulletin No. 14).

Under this definition, activities exempt from application of the Act with reference to the growing of sugar cane at plaintiff's plantation, include the preparation of suitable seedbed in the cane fields; planting; ratooning; cultivating, spraying of fields with insecticides and herbicides; elimination of competing weed growth; clearing of stones; spreading of irrigation water and operation of irrigation controls; laying, moving, or removal of field irrigation flume; patroling of irrigation ditch lines; clean-

ing and weeding of irrigation reservoirs, drainage ditches and tunnels; fertilizing and other activities to improve the physical condition of the soil; fire protection; activities designed to guarantee or improve the growth of the crop; grading of cane fields; filling of holes, gulches and ditches in fields; and harvesting operations performed to remove the crop from its growing position in the fields. These constitute farming operations, together with those activities of an incidental and conjoint nature, such as the picking up and reloading of cane stalks which have fallen from cars, the laying and shifting of sectional tracks in the fields, and the loading and moving of cane cars placed upon movable tracks and assembling the harvested crop at centralized points on the main line railroad, to commence transportation to the mill. Employees engaged in such operations, or in activities incidental to or in conjunction with them, are eliminated from the protection of the Act while engaged in such practices.

In accordance with these findings, the work of defendants which falls into one or another of the categories specified above, is exempt from operation of the Act, up to and including the point at which the crop is harvested. That point, which terminates the agricultural aspect of plaintiff's operations, occurs with the concentration of cars loaded with cane, upon the main line railroad operated by plaintiff, for transport, through intermediate processing, to the sugar refinery.

Transportation.

Plaintiff contends that the operation of its main line railroad, and the work performed by its locomotive engineers, firemen, brakemen, and other employees connected with its railroad transportation system, are exempt both under the agricultural exemption of Section 13(a)(6) and the sugar processing exemption of Section 7(c). The

latter section exempts employees engaged in the processing of sugar cane into sugar (but not refined sugar), but only when they are employed in a place of employment where the employer is engaged in the act of processing cane. The Administrator has interpreted this section to exempt employees who directly engage in processing activities, or who perform operations so closely associated thereto that they cannot be segregated for practical purposes, and whose work is also controlled by the irregular movement of commodities to the establishment; provided that such work is performed in the place where the processing actually occurs (Interpretative Bulletin No. 14). Congressional debates show that the purpose of the section was to relieve processors of seasonal agricultural commodities from the hour provisions of the Act so as to enable them more easily to conduct their operations during the peak seasons (Interpretative Bulletin No. 14).

Neither Section 13(a)(6) nor 7(c) applies to the activities of plaintiff's railroad employees. The train crews are not engaged in any act of producing sugar cane, or in any act incidental to or conjoint with the production of sugar cane; nor in processing cane into sugar at the mill, where the processing occurs. It is immaterial that they are employed by the same company which employs the farmhands and processing crews, since the determination of coverage must turn on the work of the employee.

> "The mere fact that in this case the owners of the farms are also the owners of the mill and the transportation facilities does not make transportation incident to farming.
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>
> "There seems no rational basis for saying that simply because the ownership of the mill and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provi-

sions of the Act." (*Calaf* v. *Gonzalez*, 127 F.2d, 934, 937, 938.)

In determining whether an employee is exempt from the Fair Labor Standards Act either under Section 7(c) or Section 13(a)(6), the sole criterion is the character of the work performed by the employee, as disclosed by the record (*Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564; *A. B. Kirschbaum Co.* v. *Walling*, 316 U.S. 517; *Walling* v. *Snyder Min. Co.*, 66 F. Supp. 725). Section 7(c) does not embrace activities which, though related and necessary to mill operations, are not performed conjointly with processing at the establishment where processing takes place.

Railroad operation is a systematic business calling for the employment of skilled, experienced men, trained to quick, keen perception (not farmhands or mill hands) for handling locomotives and moving cars (not the goods in transit), and for the maintenance of roadbed, track and structures, and roundhouse care and servicing of locomotives—all specialized technical work. Railroading is not farming or processing, nor intended by the Act to be a part of either. Here, the transportation operations are very substantial, occurring over many miles of trackage, and hauling hundreds of thousands of tons each year; and the investment in the railroad system, amounting to nearly a million dollars, is quite considerable. It is notorious that in years past some sugar plantations in Hawaii hired a common carrier utility company, whether from economy or lack of capital, to install a railroad system, to perform the work of hauling cane from fields to mill yards.

If Congress had said that raw *sugar production* should be given an exemption from the operation of the Act, a different situation would be presented. That Congress saw fit not to do this, is in itself significant. The parts

of the Act here dealt with exempt agricultural or farming activities on the one hand, and processing on the other. The exemptions are separate and different, one of them applying both to minimum wages and overtime hours, and the other applying only to overtime hours. The transportation system of plaintiff is such that it constitutes a separate activity, so distinct in its nature that it is not reached by either of the exemptions.

Evidence given by plaintiff's office manager establishes that the employees of the railroad system are not attached to the Field Department or the Factory (Mill) Department, but instead are carried on the payroll records of the Service Department. Plaintiff has not treated the railroad employees as within the exemption of Section 13(a)(6), for during off-season these employees have been paid overtime after 40 hours of work. Subsequent findings on the activities performed by the railroad employees disclose that they are not ordinary farmhands, and do not perform agricultural activities. The railroad system is operated as a year-round pursuit; the element of seasonality does not enter into sugar production in the Territory of Hawaii. "Continuity of employment in the production of Hawaiian sugar is comparable to employment in manufacturing operations that have minor seasonal fluctuations rather than to typical mainland agricultural operations. The equable climate of Hawaii makes possible the continuous growth of sugar and it is technically possible to carry on every type of operation every day in the year" (Def. Ex. 3B, p. 64).

The operation of the railroad, as disclosed by this record, is not a practice performed "in conjunction with" farming operations. The activities of the railroad crew, and of those employed in activities relating to maintenance, upkeep and operation of the main line railroad system, occur subsequently to and independently of the

farming activities, albeit coordinated thereto. On its records of operating costs, plaintiff distinguishes between harvesting and main line transportation.

Nor is the operation of the main line railroad "incidental" to the farming activities. The Administrator of the Act regards transportation as more closely linked to processing operations. This has been his view since 1943 (Administrator's Release G-322). This view finds support in several decisions of the United States Court of Appeals for the First Circuit dealing with the Puerto Rico sugar industry (*Bowie* v. *Gonzalez*, 117 F.2d 11; *Calaf* v. *Gonzalez*, 127 F.2d 934; *Vives* v. *Serralles*, 145 F.2d 552). In those cases it is held that the transportation of cane is not incidental to farming and therefore not exempt under Section 13(a)(6) (*Calaf* v. *Gonzalez*, supra, 127 F.2d at 936-937.) In *Vives* v. *Serralles*, supra, the agricultural exemption was held to end at the point of concentration of harvested cane, and this point was fixed as of the time when cane loaded into cars was moved from portable track onto the main line permanent tracks; at this point the dividing line was fixed between activities exempt under Section 13(a)(6), and activities not so exempt.

This seems a useful, logical and necessary point of cleavage. It is also in accord with plaintiff's long-established practice, in the maintenance of its records, of separating field activities from transportation at the point where cane cars are placed on the main line railroad.

The sole object of plaintiff's operation is the production of sugar and molasses; and as these are manufactured in its mill, it might well be argued that operation of the mill is the dominant element, and that the growing of the raw material, sugar cane, is the subordinate or incidental element. It serves no purpose to resolve such an argument, for it is clear that plaintiff engages in many separate enterprises which, taken together, constitute a hybrid type

of business (see *Phillips Co.* v. *Walling*, 324 U.S. 490, at 495).

Hauling cane on the main line railroad is not a part of harvesting operations, since the gathering of the crop is completed on the fields on which it is grown prior to transportation; and such transportation constitutes neither a storing of such crops, nor transportation either to storage or market. Transportation, as plaintiff engages in it, is a necessary preliminary to the operation of plaintiff's processing business in its mill, where the cane undergoes a substantial change in order to create raw sugar, from which state it is later further transformed into refined sugar, the main product which is sold.

Portable track is laid on the fields where cane is grown; but the permanent main line transportation is not located on the farm in the same sense. True, it is located on the plantation property, but the word "plantation" refers simply to the geographical area of nearly ten thousand acres on which plaintiff conducts all its operations. Obviously cane is not grown on the right-of-way occupied by the fifty-six miles of permanent main line railroad track. Land is set aside exclusively for railroad purpose.

The point where the main line track is joined by the portable track is the point at which harvested cane is concentrated for transportation, and at this point the agricultural exemption activity ceases and the railroad operation commences.

The court finds that employees who are employed in or on the roadbed, track, structures, cars and locomotives of plaintiff's main line railroad system, including roundhouse and rolling stock, repair and building shops, and flagmen, watchmen and dispatchers, are not exempt from the overtime provisions of the Act.

Mill.

Plaintiff contends that employees whose work is performed in the mill are exempt under both Sections 13(a)(6) and 7(c). Mill activities commence immediately after the produce has been delivered into plaintiff's storage yard and brought alongside unloading platforms. Processing begins with the weighing, unloading and cleaning of the cane, and continues through crushing, juice treatments, crystallizing, and the bagging of the product and its removal from bagging and sewing machines, and its deposit in an adjacent warehouse, bins, tanks, or directly into cars or trucks for shipment. With these several operations through the factory, the processing is begun and finished in the place where the processor is so engaged; that is to say, the entire operating plant devoted to processing usage, whether within the mill itself or in the open yard, and whether the work there performed is mechanical or manual.

Such activities are not exempt under Section 13(a)(6). The mill operations are so conducted as to assume the character of a distinct business enterprise of an industrial nature; hence the mere fact that the processor is also engaged in producing a farm crop, and is processing only commodities grown by him, does not bring all of his operations within the Act's definition of "agriculture". The processing of sugar cane is surely no less an industrial operation than the stemming and fermenting of leaf tobacco; these activities were held to be non-agricultural because they changed the form and nature of the crop (*McComb* v. *Puerto Rico Tobacco Marketing Cooperatives Ass'n.*, 80 F.Supp. 953, affirmed 181 F.2d 697).

The mill operation is not a subordinate part of farming; it constitutes a large operation that follows the pattern of the industry in the Territory of Hawaii. A separate work force is employed for the processing operation in the

mill; it does no work in the fields; it is paid in accordance with a scale of hourly rates which are different and distinct from the system used, partly at contract rates and partly at hourly rates, to pay farm labor. On its payroll records, and in the keeping of its accounts for purposes of making income tax returns, plaintiff segregates mill employees from those engaged in field activities. During off-season, plaintiff pays overtime after 40 hours to employees of the mill, but not until after 48 hours to employees engaged in the farm work.

The Court of Appeals for this circuit has warned against enlarging the term "agricultural laborer" beyond the usual idea that it suggests. Enlargement beyond common usage would produce only confusion. The test laid down is whether the product has been subjected to industrial activity. Industrial activity commonly means the treatment or processing of raw products in factories (*North Whittier Heights Citrus Ass'n.* v. *NLRB*, 109 F.2d 76, certiorari denied, 310 U.S. 632, rehearing denied, 311 U.S. 724). This decision, although interpreting the agricultural exemption of a different act, has been widely followed in its basic reasoning, and has recently been reaffirmed in *Miller* v. *Burger*, 161 F.2d 992.

The determination of this court is suported by the views recently expressed both by the Solicitor of Labor and the Administrator of the Wage-Hour Division (2 CCH 14,068-14,071). Since 1941, the Administrator has taken the position that the exemption for agricultural employees "does not apply to sugar mill employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner in his own fields" (Administrator's Release R-1568, published in 1942 ed. WH Manual, p. 408). It is also the current view of the Board which administers the National Labor Relations Act, which by Congres-

sional direction contains the same definition of "agriculture" that is to be found in the Fair Labor Standards Act (*In Re Imperial Garden Growers*, 26 LRRM 1632; 91 NLRB No. 167). See also *Vives*, *Bowie*, and *Calaf* cases, supra.

It is clear, however, that the activities under discussion are covered by the sugar processing exemption. Accordingly the work of employees which takes place in the mill, in connection with the operation of processing machinery and activities closely and intimately connected therewith, are exempt under Section 7(c).

Several activities, while occurring in the mill, are not exempt because they do not constitute a part of the processing operations. Activities performed on bagasse, a by-product which is used for fuel, are not exempt because such activities do not constitute the processing of cane to obtain sugar or syrup, nor is it processed to obtain bagasse. The exemption is limited to the processing of cane into sugar or into syrup. This finding coincides with the long-established view of the Administrator (Interpretative Bulletin No. 14).

Where an employee's activities are connected with generation of electricity, some of which is used in the mill, but also in many other operations, including the lighting of employees' houses, administrative offices, repair and service shops, and the sale of surplus amounts to a public utility company, the exemption does not apply because of the commingling of exempt with non-exempt activities in the same workweek. The matter of commingling is later discussed in greater detail in these findings.

Weekend Shutdown.

At the earlier trial, the defendants contended and the court held, that the activities in and about the mill during weekend shutdown, which consist of cleaning and minor

repairs, were not exempt under Section 7(c), for the reason that they occur at a time when no processing is taking place. In consequence, an employee who performed 40 hours of exempt work in connection with processing operations, and additional hours of work during the week-end shutdown, was held to be non-exempt for the entire week.

Upon additional evidence and a new record in this retrial, and reconsideration of this issue, it would appear that the week-end activities in the mill should not be held to defeat the exemption provided by Section 7(c). While the shutdown period consists of 24 consecutive hours, processing operations are not completely suspended during that interval. The crystallization processes of sugar remaining in the machines continue. Key employees in the firerooom, boiler room, and power house remain engaged in their regular activities. Though it is impossible to circumscribe with exactness the period during which no processing of sugar, in the literal sense, takes place, it would seem that such period comes to but a few hours, less perhaps than a full working shift, and partaking partly of the end of one shift and partly of the early portion of the next.

Employees who engage in the weekend cleaning and repair activities, work solely within the mill, and upon the very processing machinery which they operate during the remainder of the week. These employees also do the same kind of work while the mill is in operation, as an incidental activity connected with processing. In such circumstances, and in light of the exemption which Congress intended should be enjoyed under Section 7(c), the non-processing activities in the mill during weekend shutdown would appear to be too incidental and subordinate a factor to defeat exemption.

Accordingly, the court finds upon this record that the activities performed during weekend shutdown in the mill are not such as to defeat exemption, if it is otherwise applicable.

Off-Season.

The annual shutdown of the mill during the so-called off-season is a period when there is a total cessation of processing operations. Machinery and equipment located in the mill are completely overhauled, major repairs are made, and new machinery is installed. Generally the mill is shut down for a period of between 3 and 5 months. According to the evidence, plaintiff's off-season lasted 5 months in 1941; 3½ months in 1942; 3½ months in 1943; 4 months in 1944; 3½ months in 1945. In 1946, it ran from December 22 to February 9, a period of 7 weeks; this was an unusually short off-season, and doubtless relates to the occurrence of a strike lasting from September 1 to November 19, 1946.

During the off-season, mill employees engage exclusively in major cleaning and repair work, in overall preparation for the subsequent reopening of the mill. Additional men are brought in from other departments to participate in the overhaul which occurs in and about the mill, its machinery and equipment. Field employees are brought into the repair and service shops, to supplement the regular crews, because of the increased load of work. These facts not only establish the substantial nature of the off-season operation in preserving and enhancing capital investment*, but also account for the maintenance by plaintiff of a stable labor supply throughout the year, during

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* "In October 1947 the HSPA Plantation News stated: 'Estimates of the amount of money being spent in 1947 and 1948 for improvements and new equipment on sugar plantations run as high as $20,000,000 and actual outlays may be even higher.'" (Def. Ex. 3B, p. 40.)

which the number of man-days of work performed does not vary, regardless of season.

Not a particle of sugar is processed in the off-season.

It is plain, and the court finds, that the work which takes place in the mill during off-season is not exempt under Section 7(c). This holding produces no inconsistency with the finding in regard to weekend shutdown, inasmuch as the two differ vastly in purpose, nature, scale, and duration.

It has long been the Administrator's view that the exemptions provided by Section 7(c) do not apply during any dead season or off-season, when processing activities are suspended entirely for a substantial and prolonged period of time (Administrator's Release R-1892; Jan. 25, 1943). This view has been uniformly upheld by the courts. Such was the ruling in the sugar industry in Puerto Rico in the case of *Maisonnet* v. *Central Colosso, Inc.*, 2 WH Cas. 755; and the decision has been the same in reference to the cotton seed processing industry (*Heburg* v. *Independent Oil Mill, Inc.* 5 WH Repts. 777 (W.D. Tenn.); *Abram* v. *San Joaquin Cotton Oil Co.*, 49 F.Supp. 393, 6 WH Repts. 312 (S.D. Cal.)).

It is also worthy of note that plaintiff has paid, for a number of years, and throughout the period covered by this action, overtime for hours of work in excess of 40, to all mill hands, employees of the repair and service shops, and others who participate in the off-season work in and about the mill.

Repair and Service Shops.

Plaintiff claims that the employees of its repair shops are exempt both as agricultural employees and under the sugar processing exemption.

The agricultural exemption of Section 13(a)(6) is inapplicable. Machine shop men, welders, electricians, painters, carpenters, and others employed in the repair shop department, perform no work of an agricultural nature, or at a time or place conjoint with or incidental to the farming process, or on a "farm" in the sense in which that term is used in the statute. Plaintiff itself has always regarded these employees as a unit separate from the field employees. In the structure of plaintiff's business, agricultural workers comprise the Field Department; employees of the repair shops comprise the Service Department. Workers in these respective categories are carried on separate and distinct pay-rolls. For cost accounting and income tax return purposes, plaintiff makes the same distinction in its records between these departments. As subsequent findings show, plaintiff has never treated repair shop employees as falling under the agricultural exemption, inasmuch as, during off-season, repair shop employees have been paid overtime for hours of work in excess of 40 per week; this, of course, is a payment not required to be made to employees engaged in agricultural work, whether it be off-season or grinding season.

Neither is Section 7(c) applicable to exempt these employees. Their work is not that of engaging in processing, or in any part of processing, nor is their work so integrated with processing as to be a portion thereof, incapable of segregation. Plaintiff has not treated the repair shop employees as part of its mill operations. Payrolls and cost accounting records for income tax purposes show the employees of repair shops separately from the mill hands. The activities of repair shop employees relate not alone to the mill, but to all aspects of plantation operations, including the field, village facilities, administration buiding, etc.

Repair shop employees are not occupationally attached to the mill. The headquarters out of which they work is in each instance a separate structure, in which they generally perform the major portion of their work, to which they regularly report each day, and in which they receive supervision and instructions. These structures are located at varying distances, up to 300 feet, from the mill. When occasion requires them to be elsewhere than in their shops, they perform service for every operation on the plantation, not the mill exclusively. Most of them do not generally perform work inside the mill building, except during off-season, when processing is suspended. They are under separate foremen and supervisors. There is no interchange shown, during the grinding season, of personnel, equipment, or materials between the mill and the repair shops.

It is plain that the repair shops constitute, and they are found to be, self-sufficient units, operated not as an incident to any other operation exclusively or dominantly, but rather as an integral part of the over-all combination of separate enterprises jointly conducted by plaintiff. If the employees of an independent machine repair shop performed the repair activities under discussion, they would not be exempt from the overtime provisions of the Act. The fact that such work was done by employees of plaintiff, under the circumstances here presented, affords no stronger basis for applying the exemption.

This determination coincides with the view expressed by the Administrator, both in his official releases (Interpretative Bulletin No. 14) and in the position asserted in a brief filed by him in this case with the Court of Appeals. Judicial authority treating of the same issue likewise supports this finding. In *Walling* v. *Bridgeman-Russell Co.*, 2 WH Cas. 785, (District) Judge Bell held that the term "place of employment" as used in Section 7(c), means

those portions of the establishment devoted by the employer to the actual processing operations, hence the exemption does not apply to employees who perform their duties at places not devoted to processing operations. He held the exemption inapplicable to electricians, carpenters, tinsmiths, firemen, engineers, garage employees who washed and greased trucks, watchmen, janitors, warehousemen, and laboratory technicians, although the degree of separateness and specialization in that case does not appear to approach the situation in the instant case.

In *Walling* v. *DeSoto Creamery & Produce Co.*, 51 F. Supp. 938 at 943 (D.C. Minn.), employees who worked at grading, packing and loading poultry, in a room adjacent to the one where slaughtering and dressing operations occurred, were held not employed in a place of employment where the exempt processing activity was performed; this was the holding despite the fact that the activities held non-exempt were performed on the processed product. In the case at bar, the employees under discussion do not handle cane, sugar, syrup, or molasses; their activities are confined to working on machinery, equipment, and structures.

The crucial point is that Section 7(c) does not exempt entire industries from the overtime provisions of the Act, but only the specific processes therein mentioned. Thus, while the activities of employees engaged in handling, slaughtering and dressing operations in a meat packing plant were held exempt, employees in other departments, such as those engaged in meat-curing and sausage-making, were held outside the scope of the exemption provided in Section 7(c) (*Fleming* v. *Swift & Co.*, 41 F. Supp. 825, affirmed 131 F.2d 249). To the same effect, see *Colbeck* v. *Dairyland Creamery Co.*, 17 N.W. 2d 262 (S.D.). See also *Shain* v. *Armour & Co.*, 50 F. Supp. 907; and *McComb* v. *del Valle*, 15 Lab. Cas. 74,679 (D.C. P.R.).

Mill Village Maintenance.

Plaintiff contends that its employees who perform repair and maintenance work on company dwellings occupied by plaintiff's employees, and who supply village services and facilities to the employees living in the plantation villages where these houses are located, are excluded from coverage under the Act upon the ground that they do not work in any process or occupation necessary to the production of goods for commerce. Alternatively, if this contention is overruled, plaintiff invokes the exemptions of Sections 13(a)(6) and 13(a) (2).

The question of coverage is plainly one that must be decided upon the facts peculiar to each case. The Administrator has expressly left the question of coverage open, evidently recognizing that decision might well vary with the given situation. No court decision has been found that passes squarely on facts similar to those here present.

Work of a repair and service nature has frequently been held covered by the Act as a type of activity necessary to the production of goods for commerce. A few decisions of this kind may be noted: Repair of boats used in interstate commerce (*Walling* v. *F. S. Lowe & Son Boatways*, 5 WH Cas. 937); mechanical work for an independent machine corporation whose chief business consisted in servicing the tools and equipment of a company engaged in mining and shipping of coal in interstate commerce (*Princeton Mining Co.* v. *Veach*, 5 WH Cas. 734); painting, repairing, and reconstructing trucks which were brought to the employer's plant and by customers who owned them, and which were used in the interstate transportation of goods (*Walling* v. *Sturm & Sons*, 6 WH Cas. 131); maintenance men, mechanics, and mechanics' helpers who worked at garages on trucks leased by their employer to customers making substantial use of the trucks

in interstate commerce (*Skidmore* v. *Casale, Inc.*, 6 WH Cas. 33). Also to the point are *Claudio* v. *Sobrinos De Portilla, Inc.*, 5 WH Cas. 484, holding the Act applicable to employees of a corporation operating a factory and machine shop, the greater part of whose business was the repair and servicing of industrial concerns producing sugar for commerce; and *Agosto* v. *Rocafort*, 5 WH Cas. 176, holding the Act applicable to a mechnic engaged in repairing and overhauling trucks operated by an employer in a trucking business used chiefly to transport cargo from concerns producing sugar, to be shipped in commerce.

Maintenance workers, watchmen, and similar employments have also been held covered. These employments were held covered in *McComb* v. *Russell Co.*, 17 Lab. Cas. 76,781; by the United States Court of Appeals for the Fourth Circuit in *Slover* v. *Wathen*, 140 F.2d 258; by the United States Court of Appeals for the Seventh Circuit in *Engebretsen* v. *E. J. Albrecht Co.*, 150 F.2d 602; and by the Supreme Court in *Walton* v. *Southern Package Corp.*, 320 U.S. 540, and in *A. B. Kirschbaum Co.* v. *Walling*, 316 U.S. 517.

These decisions are readily distinguishable from the situation at hand, in that the employees involved therein performed work or services in, upon or directly relating to the very buildings, equipment, or instrumentalities which were used in the production of goods for commerce. The case here presented is one step removed, in that the repair and maintenance work is performed in and upon, and the service is rendered for the dwelling houses inhabited by plaintiff's production employees.

A series of cases, which have come to be known as the cookhouse or cafeteria cases, deal with an analogous situation. In *Consolidated Timber Co.* v. *Womack*, 132 F.2d 101, the United States Court of Appeals for this circuit

held the Act applicable to a baker employed in one of two cookhouses operated by a corporation engaged in logging and lumbering. It was held that the cookhouse was a necessary part of the company's production of goods for commerce, operated not with the intent or purpose of showing a profit to the owners from the sale of food or service, but rather to render a necessary assistance to the company's business, which was that of producing logs in interstate commerce:

> "The cookhouse was not a separate or independent establishment; it was actually a *part* of the company's facilities—a link in the chain—whereby it operated its business and a means whereby it accomplished the purpose of its existence. Neither cookhouse was in competition with any private restaurant for there is no evidence of an effort to secure the patronage of the general public; the service was sold at cost to those whom the cookhouse was intended to serve: the loggers. The principal activity of the cookhouse definitely was not to furnish service to the consuming public, as such, but was to serve the employees of the company." (Page 107)

The job of the cookhouse employee was held to assist the activities of the loggers by keeping their board close to their place of work, thus rendering it easier for the corporation to maintain a proper organization of its loggers, and forwarding their work by furnishing the food whereby the men were given the strength to pursue their labors.

Many cases are in accord with this decision. The United States Court of Appeals for the Eighth Circuit, in *Hanson* v. *Lagerstrom*, 133 F.2d 120, followed our circuit, holding the Act applicable to one who assisted in preparing and serving meals, and maintaining a kitchen operated to benefit employees of a concern engaged in handling pulpwood, which was then converted into products sold in interstate commerce. A federal district court in Indiana held the Act applicable to a night manager

employed by the owner of a cafeteria located in a war plant, to serve employees working in the plant who manufactured war materials shipped in interstate commerce; the cafeteria, though independently owned, was held an integral part of the organization of the manufacturer, and a necessary part of the facilities used by the manufacturer (*Ferguson* v. *Prophet Co.*, 6 WH Cas. 284). A federal district judge in Massachusetts similarly applied the Act to employees working in their employer's commissary, which was located in a railroad station and served as a kitchen and storeroom for the employer's retail stands and train service department in the same station, and for the employer's retail stands in railroad stations in other cities (*Walling* v. *Armstrong Co.*, 5 WH Cas. 474). Employees in a canteen and cafeteria operated, on premises of Republic Steel Corporation, by an independent restaurant concern were held covered in *McComb* v. *Factory Stores Co.*, 81 F. Supp. 403; coverage of the Act was there decided in favor of cooks, assistants, counter girls, dishwashers, and porters. The Supreme Court of Michhigan held the Act applicable to employees engaged in preparing food at plant cafeterias owned and operated by a large industrial corporation which sells food solely to plant workers during their lunch and rest periods (Basik v. General Motors Corp., 5 WH Cas. 1061).

The foregoing decisions turn on the finding that the work performed by such service employees is itself a part of an over-all integrated effort for the production of goods for commerce. Supplying such services, and maintaining such supply, constitute activities covered by the Act, where they have a close and immediate tie with the process of production for commerce. Although each case depends on its own facts, the decisive elements are suggested by our Court of Appeals in *Womack's* case, supra, 132 F.2d at page 107:

> "Was not the greater number of diners at the cookhouses engaged in the production of goods for commerce? Were not the cookhouses an integral part of an organization devoted to the production of goods for commerce? Does it not follow, reasonably and logically, that the greater part of the services rendered by the cookhouses was in interstate commerce rather than intrastate?"

Three decisions reaching a contrary result are easily distinguishable, and are based upon reasoning which supports the principle of *Womack*. *Kuhn* v. *Canteen Food Service, Inc.*, 77 F. Supp. 585, dealt with a restaurant operated, not by an employer engaged in the production of goods for commerce, but by an independent concern; and it was not operated as a part of facilities devoted to production of goods for commerce. Judge LaBuy accepts the principle laid down in Womack's case, saying, at page 591:

> "The Court is convinced that in cases where the production of goods is in an isolated spot where board cannot readily be ob'ained by employees, that (sic) it would be necessary for the company to furnish board to its employees, and in such cases the furnishing of the board would be a necessary part of the production of the goods."

Again, in *Bayer* v. *Courtemanche*, 76 F. Supp. 193, 196, a similar case was presented. Judge Smith there said:

> ". . . there has been no showing that the time for lunch was too short for the production workers to eat outside, nor that restaurants were not available nearby, nor that the service in them was inadequate for the workers in that area, nor, indeed, that any great proportion of the production employees of the plant availed themselves of the cafeteria at meal times. "Had any of these elements been shown by the plaintiff, it might be that his work could be considered necessary * * *"

Judge Yankwich also found against coverage in *Tipton v. Bearl Sprott Co.*, 9 WH Cas. 620, where a restaurant, not operated by Columbia Steel Company but by an independent contractor, was maintained at most as a convenience for employees at Columbia Steel, at a location in a city where numerous other restaurants were immediately available to Columbia's production workers. In a well-reasoned opinion, the court reviews the cases and bases its decision upon the fact that the cafeteria was operated independently of the company producing goods for commerce, was not located in any isolated area, was not shown to be patronized by any substantial number of the steel company's employees, and represented only a convenience to such employees rather than a necessity; furthermore, that the steel company did not control the hours, wages or conditions of work of the cafeteria employees, and such cafeteria was in no way a part of Columbia's effort to produce steel.

In the case at bar, existing conditions are such that it has been necessary for plaintiff to furnish housing and community services to its production employees. The plaintiff's villages are located both in isolation and insulation from the rest of the Territory; these villages are located upon plaintiff's lands, and are many miles from any city. No other housing in adequate quantity, except that provided by plaintiff, is shown to be available to plaintiff's employees. Historically, paintiff constructed these houses and estabished these villages for the purpose of supplying necessary dwellings for a stable labor pool which plaintiff desired to be in close proximity to its operations.

Maintenance of village facilities and dwelling repairs were carried on by plaintiff as a part of its over-all production operations, not as a matter of mere convenience for its employees. Many of the employees of plaintiff

who work on dwellings, and in connection with village facilities, are a part of plaintiff's production operations, being attached to various of the repair shops, such as the carpenter, plumbing and paint shops, which perform activities for the mill, in regard to production machinery and equipment, and for administration and office buildings. Housing and community services represented part of the wage payment made to plaintiff's employees in the form of perquisites. Abolition of the perquisite system in 1946 did not nullify either the original purpose of the housing, or the continued effectuation of that purpose. Indeed, plaintiff expressly undertook a contractual obligation with the union representing most of the defendants, to continue to furnish repairs and maintenance of housing, and village community services. At the same time, plaintiff expressed its intention not to make housing a profit-making venture as such.

More than 98% of plaintiff's employees inhabit its houses, and rental to outsiders is negligible; and among the latter are various individuals to whom plaintiff also rents space to operate commercial establishments needed in the villages. Doubtless the present availability of housing for rental to outsiders is related to the continuing mechanization of plaintiff's operations which naturally decreases the number of employees needed. The fact that the present relationship between plaintiff and its employees in regard to housing appears to be one of landlord-tenant, does not conceal the underlying realities. It is the duty of the court to look through the form to the substance. The 1946 conversion of housing and facilities into cash values, merely meant that these amounts were added to the employee's paycheck, but he paid back the same amount to the company as rental. Hence the form changed, but the substance remained unchanged.

Upon the foregoing facts, there can be no question that the operation and conduct of village facilities and housing are historically and presently an integral part of plaintiff's production effort. The only relevant court decisions passing upon repair work to homes occupied by employees of a concern engaged in interstate commerce, deal with city homes occupied by employees under genuine lease or sale arrangements. One such case is the decision of the federal district court for the Western District of South Carolina in *Morris* v. *Beaumont Mfg. Co.*, 6 WH Cas. 843. The act was there held inapplicable to carpenters and painters engaged in the construction, maintenance and repair of residences rented by a textile manufacturing concern to its employees. The company owned an average of 280 dwellings occupied by an average of 488 employees. The total average number of employees of the company was 1107. Occupancy of company-owned residences was optional with employees, and on the average more than half of them lived in homes owned by themselves or rented from parties other than the employer. All the residences owned by the company were in the city of Spartanburg, located on city streets, and interspersed with other dwellings not owned by the employer. The company's manufacturing plant was enclosed by a substantial fence within which all of its manufacturing activities were carried on; none of the houses were contained within the fenced area. The key to Judge Timmerman's decision is seemingly his finding that "The defendant does not maintain a mill village in the sense that the term is commonly used."

A similar decision is that of the District Court for the Western District of Virginia, in *Coomer* v. *Durham*, 9 WH Cas. 605. The employer was a contractor who contracted and sold houses to the employees of a company engaged in the production of coal for interstate commerce. The

coal company had at one of its operations 547 employees, of which number 412 lived in houses not owned by or rented from it, 75 lived in a village in houses purchased from the coal company, 42 lived in houses purchased by them in an entirely different village, and only 16 lived in company-owned houses. At all of its operations, the company had a total of 3251 employees, of which number 1334 lived in houses rented from it, 217 lived in houses purchased from the company, and 1700 lived in their own individual houses which had never been owned by the company. The villages in which the employees lived were not isolated communities; they were located on state highways linked with the federal highway system, and near to other communities. It was found that the coal company, from the start of construction, "planned to sell nearly all these houses and did sell virtually all of them just as soon as they were completed." Such sales, it was pointed out, were accomplished by a conveyance in fee simple by deed to the purchasers without restriction as to subsequent lease or resale; and subsequently to the original purchase, some of the purchasers had either rented or sold their houses to persons in no way connected with the coal company. Judge Barksdale found that it was not necessary, during the period of time covered by the case before him, for the coal company to provide housing for its employees. The contractor's employees were therefore held not covered by the Act.

In *Wilson* v. *Reconstruction Finance Corp.*, 5 Cir., 158 F.2d 564, 565, certiorari denied, 331 U.S. 810, the Act was held inapplicable to employees acting as firemen at a housing project, and to others who supplied water service to the inhabitants thereof, the inhabitants being production employees of two corporations engaged in interstate commerce. However, the firemen and water plant operators were employees of an independent contractor not so

engaged in interstate commerce. The court there said, "The independence of the employer of the plaintiffs and the employers of the housing occupants insulates the plaintiffs from the status of producers of goods for commerce."

The last three decisions, while holding against coverage, present a rationale which, when applied to the facts of the instant case, support a different conclusion. In origin and history, Waialua village was and remains a mill village, company-owned and company-controlled, in every sense of that term. The same is true of the smaller villages on plaintiff's plantation where its employees occupy company-owned dwellings. All these villages, and all of the buildings, houses, and other facilities existing therein, were created by plaintiff for the purpose of providing housing and community services for a stable supply of labor. These villages are located within the plantation area, and Waialua, the largest of them, was established in close proximity to the mill. Not only does plaintiff own the homes, but also the other services and buildings necessary to community life—the hospital, gymnasium, parks, playground, clubhouse. The opportunity to occupy or use any portion of these communities, their facilities and the dwelling houses therein, has always rested exclusively with plaintiff. Ingress and egress are subject to plaintiff's control.

While plaintiff's employees are not required under the collective bargaining agreement to live in company-owned houses, there is no evidence that they have any real choice over the matter. The possibility of purchasing homes of their own seems to be a remote and rare occurrence; the unique system of semi-feudal land tenure plays a role. Only to an inconsequential extent is it possible for employees to rent, at suitable locations near to their places of work, houses owned by anyone other than plaintiff. It

cannot be assumed to be accidental that, of 959 non-supervisory persons employed by the company, in the period to which this suit relates, only 16 lived in houses other than those owned by plaintiff.

The work done by plaintiff's employees in maintaining and keeping in proper condition the housing occupied by its production workers, is neither trivial nor insignificant to plaintiff's business of producing sugar. It represents a material contribution to plaintiff's production of sugar. Without the performance of such repair and maintenance work, plaintiff's housing and village facilities would fall into disrepair. Its employees would be unable to continue to occupy them, and there would be marked interference and damage to the continuation of production of goods for commerce. The close relationship between the maintenance of the mill villages and the production of cane and manufacture of sugar, is exemplified by the fact that mill village maintenance employees, such as carpenters, painters and plumbers, perform their work indiscriminately both on the buildings and facilities used by plaintiff to conduct its production operations, and on the dwelling houses. Occupation by plaintiff's production employees of its housing is to be considered in connection with the fact that plaintiff hauls many of its employees from their homes in the mill villages to and from their job sites. In the operation of its business, plaintiff has departmentalized its activities: the plumbing shop and paint shop have personnel comprising intact groups who perform necessary work both on plaintiff's production buildings and its housing. In the case of carpenters, all are attached to the carpenter shop, without segregation between village carpenters and industrial carpenters, except as to timekeeping.

It is in the light of these facts that decision must be made of the question presented. That question is whether

the work of mill village repair and maintenance is "necessary" to the production of goods for commerce. Judge Healy has pointed out that the term "produced" is broadly defined in the Act (*Culver* v. *Bell and Loffland, Inc.* 9, Cir. 146 F.2d 29, 32. The Supreme Court has said that the word "necessary", as employed in the Fair Labor Standards Act, should not be applied in a manner that would give it an unwarranted rigidity: it is a word "to be harmonized with its context" (*Armour & Co.* v. *Wantock*, 323 U.S. 126, 130-131. The issue there decided was whether a firefighting service was sufficiently necessary to the operation of a soap factory, to entitle such service employees to coverage under the Act. The Supreme Court said:

> "* * * no hard and fast rule may be transposed from one industry to another to say what is necessary in 'the production of goods.' What is practically necessary to it will depend on its environment and position * * * What is required is a practical judgment as to whether the particular employer actually operates the work as part of an integrated effort for the production of goods.
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> * * * *
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> "A court would not readily assume that a corporation's management was spending stockholders' money on a mere hobby or an extravagance. The company does not prove or assert that this fire protection is so unrelated to its business of production that it does not for income-tax purposes deduct the wages of these employees from gross income as 'ordinary and necessary expenses.'"

(No claim is advanced by plaintiff that its expenditures for wages to its employees and for other purposes in the maintenance and repair of dwellings and village facilities, are not included in its income tax returns as part of its expenses of operation. 26 USCA Int. Rev. Code Section 23(a)(1).)

> "More is necessary to a successful enterprise than that it be physically able to produce goods for commerce. It also aims to produce them at a price at which it can maintain its competitive place, and an occupation is not to be excluded from the Act merely because it contributes to economy or to continuity of production rather than to volume of production." (*Armour & Co.* v. *Wantock*, Supra.)

Accordingly, the work performed by carpenters, painters, plumbers, and others was covered, because they contributed to "the maintenance of a safe, habitable building" (*A. B. Kirschbaum* v. *Walling*, 316 U.S. 517, 524), which was, in turn necessary to house, maintain, and keep in desired proximity to plaintiff's operations, employees whose work involved them directly in the production of goods for commerce.

Whether, since the amendment in 1949 of Section 3(j), such employees are covered for future work, is not here presented. The sole question for determination deals with the period between November, 1946, and September, 1947, which antedates the recent amendments. Hence, decision here is confined to the Act as it read at the time of the activities over which the suit has been brought and no intimation is intended as to the effect, if any, of the 1949 amendments of Section 3 (j), particularly since the factual picture may have undergone change since 1949.

It remains to determine whether the exemptions of Section 13(a)(6) or 7(c) are applicable. For the reasons heretofore given in respect of employees in the repair shops, neither exemption applies.

Commingled Work.

There are numerous instances shown of the performance by a particular defendant, within a single workweek, of some activities which are exempt under either Section 7(c) or 13(a)(6), and other activities which are non-

exempt. As a general rule, the engagement by defendants in non-exempt activities, in those workweeks where this is found to be the fact, was substantial; and even in those instances where such engagement was small in amount, it was regular and recurring.

As construed by the Supreme Court, the statute makes each workweek the standard to be considered in determining the applicability of overtime provisions (*Overnight Motor Transportation Co.* v. *Missel,* 316 U.S. 572, 579). It would be contrary to the Congressional intent to grant the exemption for a workweek in which the employee performed some activities which Congress intended to be non-exempt. The Administrator has long held the view that, where exempt and non-exempt activities are commingled in a single workweek, the entire week is nonexempt (Interpretative Bulletin No. 14).

This view has been uniformly sustained in an imposing array of decisions. *Fleming* v. *Swift & Co.,* 41 F. Supp. 825 (N.D. Ill.); aff'd. 131 F.2d 249; *Walling* v. *DeSoto Creamery & Produce Co.,* 51 F. Supp. 938 (D.C. Minn.); *Shain* v. *Armour & Co.,* 50 F. Supp. 907 (W.D. Ky.); *Walling* v. *Peacock Corporation,* 58 F. Supp. 880 (E.D. Wisc.); *Weeks* v. *Postal Tel.,* 1 WH Cas. 1177; *McComb* v. *Puerto Rico Tobacco Marketing Cooperative Ass'n.,* 80 F. Supp. 953 (D.C. P.R.), aff'd., 1 Cir., 181 F.2d 697; *Anderson* v. *Manhattan Lighterage Corporation,* 2 Cir., 148 F.2d 971, certiorari denied, 326 U.S. 722; *Jordan* v. *Stark Bros. Nurseries & Orchards Co.,* 45 F. Supp. 769 (D.C., W.D. Ark.); *Walling* v. *Bridgeman-Russell Co.,* 2 WH Cas. 785 (D.C. Minn.); *Wabash Radio Corp.* v. *Walling,* 6 Cir., 162 F.2d 391; *McComb* v. *del Valle,* 15 Lab. Cas. 74,679 (D.C. P.R.); *Sykes* v. *Lochmann,* 156 Kans. 223; 132 P. 2d 620; *Gaskin* v. *Clell Coleman & Sons,* 5 WH Repts. 581 (Ky. CC, *Mercer Co.,* 1942); *Loeb* v. *Ideal Packing Co.,* 7 WH Repts. 397 (Wisc. CC, Mill Co., 1944).

In the case at bar, there are a few scattered instances where a defendant was assigned to perform exempt activities for virtually the entire week, but also performed a non-exempt activity for a small portion of time, sometimes as little as an hour or less. It is in accord with judicial authority to stand on the plain meaning of the statute, and to hold the exemption inapplicable, no matter how little time was devoted in the particular workweek to non-exempt work. Departure from the statute would create rather than obviate practical problems, including the problem of where and at what point to draw the line. The instances where such a small amount of non-exempt work was performed in a week which otherwise would be exempt, are few and scattered. They do not present a consistent or recurring pattern, and it is not claimed by plaintiff that it cannot easily avoid such situations by assigning the non-exempt activity to some other worker who normally performs that type of work as a regular part of his duties.

Accordingly, where in any given workweek a defendant engaged in activities some of which were non-exempt, none of the exemptions pleaded by plaintiff applies to such workweeks despite the fact that nearly all activities performed therein were exempt.

Retail Exemption.

Plaintiff urges that Section 13(a)(2) is applicable to some of its employees. This section exempts any employee engaged in a retail or service establishment the greater part of whose selling or servicing is in intrastate commerce. Upon the record of this case, it does not appear that any of the defendants fall within that provision; hence it is found that Section 13(a)(2) was inapplicable to all of the defendants.

Liquidated Damages.

In subsequent findings, determination is made that certain of the defendants are entitled to recover stated amounts as overtime compensation due and owing to them. Defendants seek liquidated damages in amounts equal to the unpaid overtime compensation found due to them.

The Act provides that any employer found liable for unpaid overtime wages, shall also be liable "in an additional equal amount as liquidated damages" (Section 16 (b)). In 1947, Congress passed the Portal-to-Portal Act, which contains provisions under which liability for liquidated damages, as well as unpaid overtime wages up to May 14, 1947, may be affected. Under Section 9 of that Act, no employer shall be subject to any liability, either for overtime wages or liquidated damages, if he pleads and proves that his failure to pay overtime was in good faith, in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation of any agency of the United States, or any administrative practice or enforcement policy of any such agency with respect to the class of employers to which he belonged; but this is expressly limited to claims based on an employer's failure to pay overtime prior to the date of enactment of the Portal-to-Portal Act, which was May 14, 1947.

Under Section 10, a second special defense is provided, which is more narrowly drawn with respect to the number or type of agencies of the United States on whose conduct an employer places reliance. Under this section, no employer subject to the Act shall be subject to liability for overtime compensation or liquidated damages, based on the employer's conduct on or after May 14, 1947, if he pleads and proves that his conduct was in good faith, in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpreta-

tion, or any administrative practice or enforcement policy of the Administrator of the Wage and Hour Division of the Department of Labor.

A final special defense is created by Section 11, which gives the court discretion to award no liquidated damages, or award any amount thereof not to exceed the amount specified in Section 16(b) of the Act, if the employer shows to the satisfaction of the court that his act or omission giving rise to the action was in good faith, and that he had reasonable grounds for believing that it did not constitute a violation of the Act.

Plaintiff, by its pleadings, raised all three of these special defenses. However, these defenses were abandoned at the trial; no evidence was offered by plaintiff in support of these defenses, and nothing was "proved" or "shown to the satisfaction of the court" to support these pleas. In the absence of evidence to bring into operation any of the mentioned special defenses, there is no basis on which to deny full liquidated damages to those defendants who are entitled to recover, inasmuch as such is the requirement of Section 16(b) of the Act.

Costs and Attorney's Fees.

The defendants pray for costs and attorney's fees. The Act provides that the court "shall, in addition to any judgment awarded * * * allow a reasonable attorney's fee to be paid, * * * and costs of the action" (Section 16 (b)).

The amount of attorney's fee awarded should bear proper relationship to the facts of the case, and should be reasonable in light of the quantum of service rendered, the difficulties presented by the problem and issues involved, and the extent of recovery achieved.

The court will award an attorney's fee which takes into account the foregoing factors as they relate to the facts of this case, the occurrence of two trials and one appeal,

and the total recovery for all defendants, which, including liquidated damages, amounts to $6,729.02.

Costs of suit will also be ordered paid to the defendants who prevail in this action.*

Opinion of United States Court of Appeals for the Ninth Circuit, dated November 10, 1949

Before Stephens and Healy, Circuit Judges, and Fee, District Judge.

JAMES ALGER FEE, District Judge:

This is a proceeding for a declaratory judgment, brought by Waialua Agricultural Company, Limited, a corporation, against Ciraco Maneja and forty-seven other persons as defendants, individually and as representative of all other employees of plaintiff who are similarly situated. Included also were Local 145-7 of the International Longshoremen's and Warehousemen's Union, and Jack Hall, Regional Director, Territory of Hawaii, of the International Longshoremen's and Warehousemen's Union, individually and "as representative of all employees of the plaintiff who are named herein as defendants and of all other employees of the plaintiff who are similarly situated."

The complaint sets up a general description of the operations of the plaintiff corporation and alleges that a collective bargaining agreement was entered into between plaintiff and defendant International Longshoremen's and Warehousemen's Union, Local 145-7. The complaint likewise sets up a detailed statement of the duties of each

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* The Findings of Fact and Conclusions of Law of the District Court are printed in the record ~~used in the Court of Appeals, nine copies of which have been filed with the Clerk of this Court pursuant to Rule 21(4).~~ See R. 190 *et seq.*, 308 *et seq.*

employee in somewhat vague terms. The prayer of the complaint is that the employee defendants named be declared employed in agriculture and, if not, each be declared to be engaged in the processing of sugar cane into sugar, and that certain of the employee defendants, while engaged in certain tasks in connection with the plantation villages, be declared not engaged in commerce or in the production of goods for commerce. The answer contains admissions and denials and prays a declaration that none of the employees and defendants are engaged in agriculture, and, while it is admitted that certain employees were engaged from time to time during certain work weeks in first processing, further prays the Court declare that none of them were engaged in processing as an adjunct to agriculture and that the Court declare all the employee defendants were engaged in commerce or in the production of goods for commerce, and that all of the employees were subject to the overtime provisions of the Fair Labor Standards Act and prays for an accounting.

There was then filed an elaborate stipulation which set up that competent witnesses would testify as to voluminous facts relating to the general situation. Part I of the stipulation, in paragraphs 1 to 37, inclusive, contains the agreement that the witnesses would testify to the organization of Waialua as a corporation and a detailed and meticulously precise statement of its operations and activities throughout the vast setup. Part II of the stipulation, under paragraphs 38 to 86, inclusive, contains the agreement that the witnesses would testify to a general description (not related by particular hours, weeks, months or years or to any particular calendar period) of the work performed by the forty-eight different employee defendants of the Plantation. Part III of the stipulation is

devoted to a limitation of the scope of the controversy and dispute and reads as follows:

> "It is Hereby Further Stipulated by and between the parties hereto as follows:
> "The controversy involved in the suit pursuant to which this stipulation is made and filed raises the question of whether the employees of the Plantation named as parties defendant herein and all other employees of the Plantation who are similarly situated are entitled to overtime compensation pursuant to the provisions of Section 7(a) of the Fair Labor Standards Act of 1938.
> "No controversy exists with respect to the application of the minimum wage provisions of the Fair Labor Standards Act of 1938 to the defendant employees herein or any other employees of the Plantation similarly situated as the lowest paid employee of the Plantation is paid at an hourly rate in excess of that required by the Fair Labor Standards Act of 1938.
> "The parties are agreed that any employee named herein as defendant who is held not to be subject to the Fair Labor Standards Act of 1938 or who is held to be exempt therefrom, and any other employee of the Plantation similarly situated is subject to the maximum hour provisions of the Hawaii Wage and Hour Law and must be paid at a rate of not less than one and one-half (1½) times the regular rate at which he is employed for all hours in excess of forty-eight (48) hours per week."

This stipulation was entered September 12, 1947.

So far as the record of the trial on September 18, 19, 22 and 23, 1947, was concerned, it appears the testimony consisted altogether of one witness for the defendants, who was the Regional Director for the Union, and one witness for the plaintiff, who was the Assistant Manager of the Plantation.

After the trial, the defendants filed an amended answer and cross-complaint November 3, 1947, wherein it was set up that the plaintiff had failed and refused since January

19, 1946, to compensate the defendants in accordance with the provisions of the Act. This was made an issue by the plaintiff in a reply to the cross-complaint, in which reliance was placed in part upon Section 10 of the Portal to Portal Act of 1947. However, pursuant to a joint motion for separate trial upon the issue raised by this portion of the defendants' amended answer and cross-complaint and plaintiff's answer and cross-complaint, the Court, by order dated March 22, 1948, granted the motion. This issue was never tried and is not here presented. We disregard this matter, for the Trial Court expressly directed entry of judgment upon the case presented by the original complaint and original answer according to the provisions of Rule 54(b), Rules of Civil Procedure. The cause must stand or fall on these alone.

The Court thereupon took these "issues" under advisement, and thereafter filed an opinion entitled in the record, "Findings with Conclusions," which appears in Waialua Agricultural Company, Limited, vs. Ciraco Maneja, et al, 77 F. Supp. 480. No findings of fact were made except as may appear therein. A judgment was then entered. This "judgment" does not relate to any of the individual defendants by name, but consists of a series of generalizations.

From this judgment, both sides appeal. Plaintiff attacks certain portions thereof. Defendants cross-appeal from other portions. Both appeals must be sustained. The "judgment" is a nullity. It gives no mandate or command as to the individual defendants named in the action. This document consists of a series of economic maxims which may or may not be applicable to the conditions and hours of work and overtime, if any, performed by Ciraco Maneja or Fumio Sunahara or Moses Fernandez or any other named individual defendant. It is true these expressions mention plaintiff and employees of plaintiff, as

may be noted. But there is no declaration of the rights of these defendants or any one of them either positively or negatively. There is not the positiveness of command or declaration required by a judgment.[1] The reason a judgment must be positive and founded upon fact is that it is to stand as res judicata between the parties and privies.[2] Unless the facts found as a basis for the judgment are definite and positive the ultimate characteristic of finality would be dissipated.

The second fatal defect in this pronouncement is that it lacks findings of fact. It is true, both parties refer to the "judgment" and opinion as though there were findings. But this mutual disregard of error which they had by one manner or another induced cannot avail to have this Court consider a judgment not founded in fact.[3] The Trial Court, in the opinion on file, indicated acceptance of the error superinduced by counsel and inherent in the inception of the case and in all the proceedings.

It is obvious no rule of conduct in respect to future activities and pay practices can be applied unless there are known and found as facts what work week, what employees, what activities and how connected with interstate commerce, agricultural or housing, through the particular employee. Otherwise, the process is not judicial but administrative or legislative. See Trans-Pacific Airlines, Ltd. vs. Hawaiian Airlines, Ltd., 9 Cir., 174 F.2d 63. The

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[1] Watts vs. Waddle, 6 Pet. 389, 399; Drybrough vs. Ware, 6 Cir., 111 F.2d 548, 551.

[2] "* * * an issue must have been decided before it can come within the scope of res judicata." Pierce vs. Kunkel, 5 Cir., 151 F.2d 897, 898; Brown vs. Fletcher, 6 Cir., 182 F. 963, 966-83; Hughes vs. United States, 71 U.S. 232, 237; A. O. Smith Corporation vs. Petroleum Iron Works, 73 F.2d 531, 537, where it is said a prior determination must be based on the merits.

[3] Kelley vs. Everglades Drainage District, 319 U.S. 415, 421.

absence of findings as to the particular employees named as defendants leaves no pediment on which a judgment can stand.[4] The Trial Court cites Tennessee Coal, Iron & Railroad Co., et al, vs. Muscoda Local No. 123, 321 U.S. 590, and Jewell Ridge Coal Corporation vs. Local 6167, 325 U.S. 161, as instances in which declaratory proceedings were carried to conclusion in interpretation of the Fair Labor Standards Act. But in each of these cases, detailed and specific findings were entered.[5]

The difficulties caused by lack of findings precise and definite may be indicated. First, although the parties stipulate that the gist of the controversy is whether the individual defendants are entitled to overtime compensation, there is no evidence, finding of fact, conclusion of law or declaration of the judgment that any one of the defendants named or any one similarly situated ever worked overtime for any period, definite or indefinite, and that any of them are asked or may be compelled to work overtime in the future or that either the employer or the employee contemplates such overtime work.

The result of lack of this essential finding is to render the cause moot in this Court, for it leaves the critical issue of the case here without allegation, proof, finding of fact or positive judgment. In the absence of such structure, the proceeding is coram non judice. There was not shown in the findings and judgment a "case or controversy"

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[4] Findings must be "sufficiently comprehensive and pertinent to the issues in the case so as to provide a basis for purposes of decision." Shapiro vs. Rubens, 7 Cir., 166 F.2d 659, 665; Schilling vs. Schwitzer-Cummins Co., U.S.Ct. of App., D.C., 142 F.2d 82, 84.

[5] See as to Jewell Ridge Coal Corporation vs. Local 6167, 53 F. Supp. 935, 937, 145 F.2d 10; as to Tennessee Coal, Iron & Railroad Co., et al, (directions for findings), 40 F.Supp. 4, 11, 135 F.2d 320, 322, 137 F.2d 176, 180, 321 U.S. 590, 603.

within the meaning of the Constitution.[6] If there were no basis for such a finding in the petition or evidence, the proceeding then must have been dismissed. For, failing this, there was no jurisdiction.[7] However, we need not determine whether the defect was fatal, since the cause must be remanded on account of the lack of essential findings.

The ultimate problem before the Court is the fitting of the provisions of a statute of national application to the activities of a particular employee in this giant agricultural operation. There are several phases of the fact picture on which the provisions of the Act might be pertinent:

(1) Farming operations, such as harvesting, to which Section 13(a)(6),[8] excluding from the operation of both wages and hours provisions of the Act "any employee engaged" in agriculture, as therein defined by Section 3(f),[9] might be applicable.

(2) Prevention of the spoilage of cane and preparation for delivery to market by processing to the point where raw (not refined) sugar is obtained, which might fall as work performed by a farmer on a farm in harvesting and preparing for market under section 3(f)[9] or might be excluded by Section 7(c)[10] as part of the processing of raw

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[6] Alabama State Federation of Labor vs. McAdory, 325 U.S. 450, 460-2. See Atwater vs. Freeman, 319 U.S. 359, 363; United States vs. West Virginia, 295 U.S. 463, 475; Aetna Life Insurance Co. vs. Haworth, 300 U.S. 227, 240.

[7] Colegrove vs. Green, 328 U.S. 549, 552; Ashwander vs. Tennessee Valley Authority, 297 U.S. 288, 325. Cf. Great Lakes Dredge & Dock Co. vs. Huffman, 319 U.S. 293, 300; Nashville, Chattanooga & Louis Railway Co. vs. Wallace, 288 U.S. 249, 262.

[8] 29 U.S.C.A. § 213.

[9] 29 U.S.C.A. § 203.

[10] 29 U.S.C.A. § 207

sugar or might be considered in part as the production of goods for commerce.

(3) Construction, conservation, repair and reconditioning of plant, irrigation systems, tools, agricultural machines, processing plants, instruments of transportation, which might fall under Section 13(a)(6), Section 7(c) or Section 3(j).[11]

(4) Construction, management, repair, reconditioning and operation of villages, which may not be included under the Act at all, and may, on the other hand, fall in part or in whole under Section 13(a)(6), Section 7(c) or Section 3(j).

Inasmuch as it is apparent that the work of an employee defendant might fall under any one of these various and highly diverse classifications or might in a particular week comprise a combination of duties under two or all of these classes, the necessity for specific findings becomes more and more clear. Such findings must be in terms of the hours of each work week and the nature of the duty performed in order to fix the kaleidoscopic changes which vary the picture as often as the duties of a single employee shift under the light of the statutory provisions.

In certain fields, where the Trial Court drew general conclusions, we are unable to speak without such specific and positive findings. But it is not the function of an Appellate Court to make findings on its own account. Besides, other difficulties intervene. The stipulation is in the form of testimony and would require the judgment of the Trial Court to weigh the whole and select proper portions for incorporation into findings. It is true the attorneys requested more specific findings as to employees. The able and conscientious Trial Judge was unable to

[11] 29 U.S.C.A. § 203.

make such findings owing to the posture of the case and the state of the record—a matter which will be hereinafter discussed. This is pointed out in the opinion of the lower court on file herein.

It is a necessity, in view of the fact that a purported declaration has been entered below, that it be specifically indicated what findings would be requisite to support a judgment. Such analysis follows:

The statement that "practically every person employed in the work of a sugar plantation in Hawaii is employed in 'commerce' as it is defined and dealt with in the Fair Labor Standards Act," is a conclusion of law and not an applicable finding of fact.[12] The only method of making binding findings upon this subject is to enumerate the exact duties of a particular employee for a specified period of time and apply the pertinent statutory provisions. The imperative need for detailed facts upon which to found positive declarations is found in the nature and purpose of the act and the exclusions. The humanitarian purpose of the statute to insure to the industrial workers a fair wage for a reasonable work week was here crystallized, as the learned District Judge pointed out.

But the raising and harvesting of sugar were specifically given consideration by Congress on account of the immense importance to the economy of this country as a whole. The text of the Act itself, the debates over the meaning of provisions, and especially the broad phrasing of the exclusions, indicates the intention that construction should be evenly balanced and not technical. The text re-

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[12] Cf. Interstate Circuit Inc. vs. United States, 304 U.S. 55, 56. "The statements in the decree that in making the restrictive agreements the parties had engaged in an illegal conspiracy were but ultimate conclusions and did not dispense with the necessity of properly formulating the underlying findings of fact."

flects the feeling that, in troublesome times, the need for sugar may momentarily become vital. As to sugar, the all-year processing exclusion, in addition to the broad agricultural exclusion, indicates strongly congressional intent. Not only was it the desire to exempt processing as a part of the harvesting done by a farmer or on a farm, but also processing done by a third party. These provisions are not alternative or mutually exclusive, and should be liberally construed for the reasons given by this Court in McComb vs. Hunt Foods, Inc., 9 Cir., 167 F.2d 905, 908. It must be remembered that the construction given to this Act by the Court as to Hawaii, although not conclusive, will be generally applied to wheat farms and sugar plantations in continental United States.

Agriculture and farming, as those terms are generally understood, are not interstate or foreign commerce. As has hitherto been pointed out by this Court in the case just cited above, these provisions relating to farming are exclusions, not technical exemptions to be construed in accordance with over-refined rules of pleading, but broadly and liberally as is demanded by the nature of the subject and the unquestionable intent of Congress. This factor is directly applicable to the individual employee because the Act specially provides that the statute shall not apply to any employee who is engaged in agriculture.

As a result of the basic inconsistency which has been pointed out before, vague phrases in the opinion of the District Court are particularly inept when relating to the activities of the employees concerned with the villages. It is probable it might be concluded, if a detailed finding of the work done by a particular employee in a particular week were made, that he had no connection with commerce or the production of goods for commerce, or it might be found that he was engaged in agriculture or processing of sugar cane. The wealth of detail which would have

been testified to by competent witnesses relating to the villages on the company property is such that it is extremely difficult to discover on what basis the Court believed many of these activities had any relation to interstate commerce.

Under the general conclusion that all employees of Waialua are engaged in commerce, the Trial Court necessarily holds that the carpenter who initially constructed a house for an army officer on company property and the beauty operator who works in a hotel for transients and the girl who takes tickets at the moving picture house are so engaged. If this be true, it would be stretching the bow very far. But we do not know that such employments exist, although "other employees similarly situated" might be construed to include such type work. But, in excepting to this conclusion contained in the opinion of the Trial Court, attorneys for appellant desire all employees blanketed under the agricultural exclusion, which, of course, would be just as improper. It is doubtful that many of these employees could be included in the agricultural exclusion. There may, on the other hand, be certain portions of such employment which would relate to retail or independent establishments under the statute, but the lack of findings hampers this Court to such an extent that we cannot deal with the situation. Scattered through the stipulation as to almost every one of the employees before the Court are statements to the effect that "he cuts firewood for use as fuel by plantation employees living in plantation villages." He "is engaged exclusively in cutting firewood for use as fuel by plantation employees living in plantation villages, repairing houses and pruning shade trees, etc." And again, "he may spend a day or two grading around * * * plantation housing areas preparatory to the construction of a new building or a house." Here a broad brush has been used, and there is no shading. If it were stated for what plantation employee the

firewood was cut, then there might be possibility of a definite conclusion, but we would have to know whether the firewood were a perquisite or whether it were paid in part as wages and whether it were a gift, dependent upon the relationship of the employee to the company.

The determination of how many angels could stand on the point of a needle would seem to have a firm foundation in fact, as compared with a determination of what relation the furnishing of firewood gratuitously to the village streetcleaner or tree trimmer around independent establishments of Waialua village has either to interstate commerce or to agriculture. But again, we do not know the facts. The finding in this regard might be based upon the evidence set up in the stipulation that some competent witness would testify to these facts:

> "Many non-plantation and independently owned and operated stores, shops, restaurants, service establishments and public schools and churches made their appearance on the plantation itself in and around the village of Waialua to serve the needs of plantation employees and their families living in the area."
> "The village of Haleiwa is a small business and residential community which is made up of privately owned residences and typical small retail and service establishments. Haleiwa caters to plantation employees and to surrounding community residents, who include persons working at other locations on the island of Oahu and residents of numerous beach houses and Army and Navy personnel using beach recreational facilities."
> "Employees of the plantation as heretofore are continuing to render services and perform maintenance work on plantation houses and village areas."

The difficulties of proceeding without a firm basis of fact are highlighted by a consideration of the transportation. The activities of employees engaged in transportation are various, according to crystalized testimony. Some work of this type might be classified as wholly agricul-

ural, such as transportation to market, within the statutory exclusion. Some might be viewed as processing, if that be not also agricultural, and a portion might be considered as unrelated to commerce or production of goods for commerce. It is probable that no feasible distinction can be drawn under the language of the statute between carriage by motor truck, railroad locomotives or other modern devices, and by water buffalo with carts, as the statutory cleavages are on other lines. For the same reason, distinctions cannot be drawn on account of size. If a particular operation in transportation were done, according to the facts, by a farmer in harvesting, it would not fall under the statutory provisions even if the farmer were an agricultural giant such as Waialua. If the particular hauling is not done by a farmer or "on a farm" "as an incident to or in conjunction with" farming operations, such as harvesting, then the subsidiary questions arise as to whether the haulage is connected with excluded processing or with the production of goods for commerce at all. The pushing of loaded sugar and molasses cars from plant to siding of a carrier might be delivery to a carrier for transportation to market or a part of a processing operation, according to the surrounding circumstances, such as, for instance, the time at which the raw sugar is sold. The qualification of transportation of men over roads outside the Plantation, the carriage of supplies for the farm or for individual storekeepers or for construction or for the electric plant depends on facts in minute detail. The placing of certain activities in transportation or in the category of "preparation for market" or "harvesting" on the one hand, or on the other in the category of "processing" of sugar cane into raw sugar, demands meticulous consideration.

The gathering of the cane and transporting it on the farm and reducing it to a product which can be handled without loss probably bears some analogies to other farm-

ing. In the old days of thrashing operations in wheat with stationary thrashers, the header cut the grain and it was carried by elevators into header boxes and by the header boxes carried to stacks. Thereafter the stationary thrasher would move from one stack to the other and thrash out the grain and place it in sacks. If the farmer owned his own outfit and farmed his own land, it was all a part of the harvesting operation up to the point where the grain was in the bag. The facts, if found as regards sugar cane, would settle the question as to whether the operations were outlined on stipulation as part of "harvesting."

If it be that, to prevent deterioration, there must be direct and immediate delivery from the harvest field to the cane-cleaning plant for cleaning preparatory to crushing, the hauling might be placed upon the same basis as the other processes which are necessary to prepare agricultural products to prevent deterioration. Again, the thrashing operation with wheat, which is only a first step, may furnish a guide. Everyone realizes that, in order to be used, the wheat must necessarily be elsewhere milled into flour. Likewise, everyone realizes that, before the sugar is usable, it must be refined at another factory. The process of harvesting cane might end only with the bagging of the raw sugar, as the harvesting of wheat ends with the bagging of the grain. The disposal of the molasses, which is an incidental product, may be similar to the disposal of the straw and chaff, which is an incidental product in the wheat harvesting process. The facts themselves, if found as to a particular employee, dictate the application of the statute.

The stipulated evidence would seem to indicate that sugar cane is highly perishable and starts to deteriorate immediately after cutting. The same source would indicate that, to avoid serious losses, it must be processed

into sugar, syrup or molasses within a few hours after it has been severed from the ground, and that for this reason and because of the great weight and bulkiness of cane as compared with raw sugar, it must be processed within a few miles of where it is grown. It was agreed also that sugar cane never moves into interstate commerce in its natural state. But these are not solidified into findings so that it can be determined whether the hauling of the cane is harvesting, an activity performed on a farm in preparing an agricultural commodity for delivery to market or to storage, or an essential processing operation without which this farm product would have been lost or wasted.

The question as to the classification of workers who have to do with irrigation has recently been dealt with by the Supreme Court of the United States in The Farmers Reservoir & Irrigation Co. vs. McComb, Adm., U.S.S.C., June 27, 1949. There it was held that an irrigation system common to a great many farms which hired its own employees was under the provisions of the Fair Labor Standards Act and was not covered under the agricultural exception. But the Court there pointed out that in the particular case there was not an operation by a farmer or on a farm, but that it was a communal enterprise by several farms. The explanation for this case is the same as that of Colaf vs. Gonzales, 1 Cir., 127 F.2d 934, Bowie vs. Gonzales, 1 Cir., 117 F. 2d 11, 123 F.2d 387, and the opinion of this Court in North Whittier Heights Citrus Assn. vs. National Labor Relations Board, 9 Cir., 109 F.2d 76. While it is probable The Farmers Reservoir opinion only highlights the exclusion of the worker who deals exclusively with irrigation on the farm of this single owner as one engaged in agriculture, the implications as to those who construct the canals and those who may work off the farm, if there be any, must be settled by reference to the actual facts.

It is impossible for this Court to rule in this state of the record and without findings as to specific employees, specific work, specific time and exact results on timekeepers, warehousemen, material clerks, laborers who load stones on conveyances in the fields and machinists at the mill, activities in construction and maintenance, employment, part or full time, in operation, maintenance and repair of equipment, burning of bagasse, generation and distribution of electricity, the cleaning and repairing of a mill or machinery and equipment, the hauling of supplies and equipment by motor truck and maintenance and repair thereof, the shoeing of horses and mules, maintenance and repair of buildings and grounds, and clerical employees. We believe many of these activities are shown by the testimony indicated in the stipulation to be excepted from the statute. But we cannot make findings of fact.[13]

Since the cause must be remanded then for exact findings, it will be pertinent for the District Court to determine whether there is a justiciable controversy, as above noticed, and also whether in any event a declaratory proceeding should be entertained. For the difficulty in crystalizing findings of fact did not arise from ineptness or recalcitrance of the learned Trial Judge, but from the course of the proceedings and the attitude of the real litigants.

The form of proceeding chosen by plaintiff was a declaratory judgment. This was unfortunate since generalities rather than concrete and exact definition of facts result from such a proceeding. Furthermore, since the proceeding is nebulous in form, the uncritical user may believe that any type relief can be obtained therein. But on top of the declaratory proceeding was superimposed the

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[13] Kelley vs. Everglades Drainage District, supra; Ford Motor Co. vs. National Labor Relations Board, 305 U.S. 364, 373.

joinder of and prayer for relief against all similarly situated. A blanket declaration of exclusion of all employees was sought. Then Waialua seemed to consider itself as representative of all its feudally organized brethren. Joined as defendants were the Union and its Regional Director, although no relief is sought against either. These latter appeared to have slight, if any, interest in the particular individual defendants, for they had in contemplation much broader issues. All the defendants, including these individual employees, appeared by the same counsel. But the moving actors were the Union and the director on one side and the "representative" Plantation on the other. The answer prayed likewise for a declaration in broad terms.

The record shows that none of the individual employees was called upon to testify in the case. No one of them was called to establish his work record in any particular week. Nor was any of them ever called to establish that he worked overtime. So far as the record indicates, no employee of the Plantation was ever in Court. Perhaps these minor characters could not be trusted in this litigation of the demigods. In any event, the major players seemed to have treated them as pawns.

The individual defendants and the duties of each are described in the stipulation, but with such broad strokes that individual characterization was obliterated and a composite portrait of some characteristics of an assumed worker achieved. The basis of findings of fact was here destroyed.

The record in the case consisted of the agreements of the stipulation, in which, undoubtedly, the Plantation and its operations and activities are described in great detail albeit it may be said with a very kind voice. There were injected into the record pamphlets entitled "Labor in the Territory of Hawaii" and "The Economy of Hawaii,

1947." The Regional Director of the Union testified he could not personally swear as to the operations at the installation of plaintiff, but that he had intimate knowledge of the condition on other plantations on the island and the character of the work done there. Notwithstanding he testified using the stipulation as a guide as to how various general functions of employees were performed throughout the Plantation on the island. An example of his method is contained in the following expression:

> "I must confess, your Honor, that this legal argument leaves me a little cold. I am trying to indicate in these job descriptions where they are incomplete and where they are misleading. And in the case of No. 42, Augustine Lorenzo, the description indicates that all of the water is used exclusively for irrigation purposes. Employees similarly situated on many of the plantations are handling water that is also used for mill purposes."

It is true the attorney for Waialua objected to this particular testimony, but he had already set the stage by the course of the proceeding up to that time. The net result was an attempt to lay foundations for an essay upon the economy of Hawaii or on labor conditions in Oahu. While the semi-feudal organization of industry and agriculture upon the plantations of this semi-dependent archipelago present a national problem, there should be no attempt to settle them on the basis of an agreed record between a single plantation and a labor organization.[14] Especially is this true where the rights of the individuals involved are utterly disregarded, notwithstanding the express lan-

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[14] The situation has not been aided on appeal so far as clarity is concerned by the intervention amici curiae of the Administrator of the Department of Labor, who takes a Janus-like position, and the American Farm Bureau Federation of the United States of America and American Sugar Cane League of the United States of America, Inc., since none of them discuss the matter on the record or with relation to the particular defendant employees.

guage of the statute. The danger is that, by agreeing as to this course of conduct, a precedent might be established for the settlement of problems on the mainland which does not have the peculiar problems of Hawaii.

The intention of the real litigants to make this a case upon which a general advisory opinion would be written appears in the discussions over the admissibility of certain testimony. The disregard of the employees themselves, who are the individuals whose interests are affected, is undisguised. The attorney for the Union says:

> "It isn't our purpose in this declaratory relief case to just get a determination for Waialua. That wouldn't solve anything. You'd have 30 odd other plantations that would still not have any authoritative statement as to where coverage lies and where it ends. The purpose of this proceeding was to get, first of all, a plantation which was sufficiently and substantially typical and representative, so that the decision in that case would apply to the rest of the industry. And that's why Waialua was picked out."

It will be noted then that this expression indicates that this action was brought by agreement between Waialua and the Union. The attempt was to dispose of it upon terms of agreement between these two and thereby compromise the rights and interests of hundreds of employees who would not themselves be permitted even to compromise their own coverage.[15]

The Trial Court should then consider as to whether there is any real adverse interest between the parties who are actually conducting the litigation.[16] For in the absence of real controversy between the actual parties, the stipulation, which practically dictates the judgment, ren-

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[15] D. A. Schulte, Inc. vs. Gangi, 328 U.S. 108, 116.

[16] United States, et al, vs. Johnson, 319 U.S. 302, 304; Coffman vs. Breeze Corporations, Inc., et al, 323 U.S. 316, 324-5.

ders the case moot.[17] The Court should consider that there is no power to render opinions merely advisory[18] or to decide moot questions[19] or to set precedent for future litigation.[20] It is of great importance that the rights of third parties might be prejudiced by a declaratory judgment in this case even if founded upon proper findings.[21]

Refusal to entertain a petition for declaratory judgment is peculiarly within the discretion of the Trial Court.[22] If a "concrete set of facts" would be supplied to which the statute could be fitted and thereby "an adequate and effective judgment" rendered,[23] it would be proper to proceed. For such a judgment would satisfy the necessity of firmly founded fact findings[24] and the elements requisite for a plea of res judicata[25] in subsequent litigation. It

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[17] Paradise Land & Livestock Co. vs. Federal Land Bank of Berkeley, 10 Cir., 147 F.2d 594; Buck's Stove & Range Company vs. American Federation of Labor, 219 U.S. 581; Dakota County vs. Glidden, 113 U.S. 222, 223-4.

[18] St. Pierre vs. United States, 319 U.S. 41, 42.

[19] United States and Interstate Commerce Commission vs. Alaska Steamship Company, 253 U.S. 113, 115.

[20] United States vs. Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft, 239 U.S. 466, 475-7.

[21] Lord vs. Veazie, 8 Howard 251, 255-6. See also Meeker vs. Straat, 38 Mo. App. 239, 243; Ward vs. Alsup, 100 Tenn. 619.

[22] Franklin Life Ins. Co. vs. Johnson, 10 Cir., 157 F.2d 653, 656.

[23] Alabama State Federation of Labor vs. McAdory, 325 U.S. 450, 468.

[24] Creamery Package Mfg. Co. vs. Cherry-Burrell Corporation, 3 Cir., 115 F.2d 980, 983, Cert. den. 312 U.S. 709; Interstate Circuit, Inc. vs. United States, 304 U.S. 55, 56.

[25] Pierce vs. Kunkel, 5 Cir., 151 F.2d 897, 898.

would remove the suspicion of an advisory opinion [26] dealing with "assumed potential invasions" of rights [27] and an academic pronouncement [28] instead of a definitive judgment. However, we leave this as a suggestion only and not as a direction.

Unfortunate as the consequences of remand may seem, it would be still more unfortunate for this Court to write a treatise without fact foundation. Other courts would then be required to guess similarly without foundation. The cause is therefore remanded for further proceedings in accordance with this opinion, either for dismissal for the reason that no ground has been shown for entry of a declaratory judgment or to permit the entry of detailed findings as to each employee defendant, based upon an adequate record. The judgment herein, which is in the form of a manifesto or at most of a legislative enactment or an administrative rule, is set aside.

Remanded for further proceedings.

(Endorsed:) Opinion. Filed Nov. 10, 1949. Paul P. O'Brien, Clerk.

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[26] This caution is heavily reinforced by the language and action of this Court in Imperial Irrigation District vs. Nevada-California Electric Corporation, 9 Cir., 111 F.2d 319, 321, 322. To like effect, Johnson vs. Interstate Transit Lines, 10 Cir., 163 F.2d 125, 130.

[27] Ashwander vs. Tennessee Valley Authority, 297 U.S. 288, 324; Arizona vs. California, 283 U.S. 423, 462.

[28] Johnson vs. Interstate Transit Lines, 10 Cir., 163 F.2d 125, 130.

[fols. 843-844] SUPREME COURT OF THE UNITED STATES

CIRACO MANEJ, ET AL., Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—Filed July 10, 1954

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 22nd, 1954.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 13th day of July, 1954.

[fols. 845-846] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 357

CIRACO MANEJA, ANTONE VIERRA, TADAO WATANABE, ET AL., Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED

ORDER ALLOWING CERTIORARI—Filed November 8, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The cases are consolidated for argument and each side is allowed one hour. The Solicitor General is invited to participate in oral argument on behalf of the Secretary of Labor as *amicus curiae*.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 847] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED, Petitioner,

vs.

CIRACO MANEJA, ET AL.,

ORDER ALLOWING CERTIORARI—Filed November 8, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The cases are consolidated for argument and each side is allowed one hour. The Solicitor General is invited to participate in oral argument on behalf of the Secretary of Labor as *amicus curiae*.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court

OF THE

United States

OCTOBER TERM 1954

No. 357

CIRACO MANEJA, ANTONE VIERRA, TADAO WATANABE, KOICHI OKOUCHI, TSURUO HAYASHI, CORNELIO ASUNCION, ROQUE CRISOSTOMO, PETER HOLMBERG, HATSUSUKE SERA, TAKUMI OKOUCHI, PEDRO DUMLAO, BERNABE HERNANDEZ, DOMINGO GUIGUI, USHINOSUKE KONDO, TERUICHI KUBO, MASAIKI OATO, SIMON CUMLAT, APOLONIO LAZO, GICHI HAMAMOTO, DIONICIO CARRIT, SERAPHINE ROBELLO, TISHIO TANAKA, BARNEY FARIA, FUMIO SUNAHARA, HIROSAKU TAKATA, ALFRED REYHER, MASARU EZAWA, DAMASO CLAUNAN, ANTONE ROBELLO, YOSHIJI YAMADA, EDWIN MORI, GENJIRO HIRONAKA, JIRO SAKAI, MARGARET FUJIWARA, LOUIS PACHECO, YUKISHIGE TSUTSUI, YACK CHUN LEE, EIKO SAKAGUCHI, MOSES FERNANDEZ, and TOSHIO KASHIWABARA,

Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,

Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

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In the Supreme Court
OF THE
United States

OCTOBER TERM 1954

No.

CIRACO MANEJA, ANTONE VIERRA, TADAO WATANABE, KOICHI OKOUCHI, TSURUO HAYASHI, CORNELIO ASUNCION, ROQUE CRISOSTOMO, PETER HOLMBERG, HATSUSUKE SERA, TAKUMI OKOUCHI, PEDRO DUMLAO, BERNABE HERNANDEZ, DOMINGO GUIGUI, USHINOSUKE KONDO, TERUICHI KUBO, MASAIKI OATO, SIMON CUMLAT, APOLONIO LAZO, GIICHI HAMAMOTO, DIONICIO CARRIT, SERAPHINE ROBELLO, TOSHIO TANAKA, BARNEY FARIA, FUMIO SUNAHARA, HIROSAKU TAKATA, ALFRED REYHER, MASARU EZAWA, DAMASO CLAUNAN, ANTONE ROBELLO, YOSHIJI YAMADA, EDWIN MORI, GENJIRO HIRONAKA, JIRO SAKAI, MARGARET FUJIWARA, LOUIS PACHECO, YUKISHIGE TSUTSUI, YACK CHUN LEE, EIKO SAKAGUCHI, MOSES FERNANDEZ, and TOSHIO KASHIWABARA,

Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

Petitioners, forty in number, respectfully pray that a writ of certiorari issue to review the judgment of the

United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on May 5, 1954.

CITATIONS TO OPINIONS BELOW.

The opinion of the District Court of Hawaii (hereinafter referred to as the trial court) is reported at 97 F. Supp. 198. The opinion of the United States Court of Appeals for the Ninth Circuit, *reversing* the judgment of the trial court, is as yet unreported. The opinions delivered in the courts below are separately printed in the Appendix, pp. 1-108.[1]

JURISDICTION.

The judgment of the Court of Appeals was entered on May 5, 1954. A petition for rehearing was not filed by petitioners.[2] An order extending, until September 22, 1954, the time within which to file this petition was entered by Mr. Justice Black on July 13, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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[1]Prior opinions of the courts below dealing with this case are reported at 77 F.Supp. 480 and 178 F.2d 603.

[2]A petition for rehearing filed by respondent on June 2, 1954, was denied with a brief opinion on June 24, 1954 (Appendix, pp. 107-108).

QUESTION PRESENTED.

Petitioners are employees of respondent, a corporation which engages in Hawaii in the large-scale production of sugar cane, its manufacture there into raw sugar, its exportation from there to the mainland where it is refined and marketed from a plant in California operated by a cooperative association of which respondent and thirty other Hawaiian sugar producing companies are the sole members.

The question presented is whether, and to what extent, respondent is exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. 201, *et seq.*) Directly embraced in this question is the correctness of the holding of the court below that none of the petitioners was engaged in commerce or the production of goods for commerce and of the subsidiary ruling that the "agriculture" exemption deprived each petitioner of the statutory right to overtime compensation.[3]

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[3]The trial court's ruling that the "processing" exemption of Section 7(c) of the Act applied only to the place where and at the time which processing was actually taking place involves eight petitioners (Hernandez, Dum' o, Kondo, Cumlat, Lazo, Kubo, Hamamoto, Oato). Its ruling that an employee who performed some exempt and some non-exempt work in a given workweek was covered by the Act for that week also involves some of the other petitioners. The trial court did not pass upon either of these rulings (Appe[illegible]x p. 105, n. 45).

Against the contingency that respondent will urge in opposition that the judgment of the trial court is in error upon both of these grounds, and in order to support their contention that neither of these grounds presents a question which would be an obstacle to the ultimate affirmance by this Court of the trial court's judgment, petitioners will argue here, if the writ is granted, that the

STATUTE INVOLVED.

This case involves, *inter alia*, the following sections of the Fair Labor Standards Act of 1938: Sections 3(b), 3(f), 3(j), 7(a), 7(c), 13(a)(6), and 16(b). These provisions are set forth in full in the Appendix, pp. 109-111.[4]

STATEMENT.

This case was begun in July of 1947 by respondent, for a judgment declaring its obligations under the foregoing provisions of the Act. The jurisdiction of the District Court was invoked because a question arose under a law relating to commerce, the Fair Labor Standards Act. The complaint named as defendants certain employees of Waialua (among them petitioners), and "others similarly situated", and the labor union which was the collective

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trial court correctly applied the law to the facts on both these points.

Its view of the scope of the processing exemption is sustained not only, as it pointed out (97 F.Supp. at 23; Appendix p. 56) by the "long-established view of the Administrator," but also by *Maisonet v. Central Coloso, Inc.*, 2 W.H. Cases 753 holding that the processing exemption does not apply to employees engaged in the construction, repair and preparation of a sugar plant in readiness for the next season. See also *Domenech v. Cities Delivery Express, Inc.*, 2 W.H. Cases 516.

Its view that an employee is entitled to the benefits of the Act during any week in which he performs "commingled" work appears to be required by *Overnight Motor Transportation Co. v. Missel*, 316 U.S. 572, to be supported by an unbroken line of lower court decisions (*Anderson v. Manhattan Lighterage Corporation*, 148 F.2d 971, cert. denied 326 U.S. 722; *Wabash Radio Corporation v. Walling*, 162 F.2d 391), and to be consistent with the Administrator's views. (Interpretative Bulletin No. 14, 1944 W.H.Man. 560, 574.)

[4]The statutes are set out in the Appendix as they existed during the period of time here involved.

bargaining representative of those employees. The employees (including petitioners) answered and also filed a cross-complaint under Section 16(b) of the Act, to recover for themselves and "others similarly situated" unpaid overtime compensation, liquidated damages, costs, and attorneys' fees.

The issues raised by the pleadings concerned the scope of the "agriculture" exemption contained in Section 13(a)(6) of the Act, and of the "sugar processing" exemption contained in Section 7(c). After the trial,[5] the District Court held that, with certain exceptions, the overtime provisions of the Act applied to the defendant employees (77 F. Supp. 480).

On Waialua's appeal, the Court of Appeals (178 F. 2d 603):

(a) Questioned the appropriateness of an action in declaratory relief or of a representative or class suit;

(b) Held the findings were inadequate as to the precise activities of the individual employees and their connection, if any, with interstate commerce, and as to the exact hours and work weeks involved; and

(c) Remanded the cause for further proceedings.

Waialua's petition for a writ of certiorari was denied (339 U.S. 920).

Upon the remand, and in conformity with the decision of the Court of Appeals, the pleadings were amended to eliminate the class action aspects of the case, and the

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[5]By stipulation the trial was limited to the issues raised by the complaint and answer; the trial of the issues raised by the cross-complaint and the answer thereto was deferred.

union was dismissed as a party defendant. The number of defendants was reduced to forty-two, and the period in controversy was limited to the time between November 20, 1946 and September 14, 1947. This time the issues raised by the cross-complaint were also tried, petitioners seeking money judgments for unpaid compensation for work in excess of forty hours per week. Respondent sought to avoid the statutory provisions for overtime pay, claiming that it was exempt from these obligations by virtue of Sections 13(a)(6) and 7(c) of the Act.

The record made at this second trial consisted of the testimony of twenty-two of the employees involved and of respondent's general manager, and also of a comprehensive stipulation of facts entered into by the parties. The stipulation set forth in great detail the various and varied operations of respondent, and the tasks performed by each employee involved in connection therewith, hour by hour and week by week during the period involved. The respondent's manager testified as to the departmentalized nature of the business and generally substantiated the stipulation. The employees testified concerning the work performed by them personally in the vast enterprise conducted by respondent.

Thereafter, detailed findings of fact were made (97 F.Supp. at 201-218; Appendix, pp. 2-43), the court below saying of them:

> "The findings before us are now meticulous and exact as to the hours and type of work performed by each worker defendant during each work week in question." (Appendix, p. 89.)

These findings reveal that:

Waialua was the third largest producer of raw sugar in Hawaii, the Territory itself producing during the years 1941 through 1945 between 10% and 13% of the world supply. During 1945, Waialua produced over 56,000 tons of raw sugar. At the time of trial it was producing sugar cane on 9663 acres of land, all owned by it. There were 1144 persons in its employ on September 1, 1946.

To transport the sugar cane to the plant where it was manufactured into raw sugar, Waialua used its own modern railroad system consisting of 56 miles of railroad track, 10 locomotives, and 712 cane cars. A complete roundhouse was maintained for servicing this equipment.

The manufacturing plant and mill was highly mechanized, consisting of a cleaning plant, a crushing room, a boiling room, and a bagging room. This plant was located in a yard area separate and distinct from the growing fields. During the approximately three months of each year when the plant was closed down for repairs to machinery, no processing operations were conducted.

Waialua also maintained complete and physically separate warehouses and shops for the repair and overhaul of field equipment, mill equipment, and equipment used in servicing Waialua Village, the town maintained by respondent to house its employees.[6] The shops included a

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[6]At the time of trial, the village consisted of 820 houses, all owned by respondent, together with business establishments necessary to serve the community. On the basis of a census which was completed June 30, 1946, the 820 houses on the plantation were occupied by 3373 persons. Of the 969 non-supervisory employees

machine shop, a welding shop, a blacksmith shop, a tinsmith shop, a shop for the repair of cane-loading machines, a tractor, repair shop, a garage, an electric shop, a carpenter shop, a paint shop, and a plumbing shop. The men employed in these activities were qualified machinists, welders, electricians, painters, carpenters, etc., devoting their full time to their crafts. A separate plant was also engaged solely in the production of concrete products used in the fields, mill and village.

Waialua's operations, as reflected by its financial, accounting, cost and personnel records, had long been divided into the following separate departments, each performing specialized production functions:

1. Field Department—having to do with the growing of cane and delivering it to the railroad cars.

2. Factory Department—having to do with the manufacture of cane into raw sugar.

3. Service Department—having to do with railroad and truck transportation and the various repair shops.

4. Village Facilities Department—having to do with the upkeep and maintenance of Waialua Village.

In addition there were a number of smaller departments such as office, laboratory, agricultural control, etc.

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in Waialua's employ at the time of trial, all but 16 lived in the village. All of the 22 employees who testified at the trial lived in Waialua Village. Two of them were born there and had never lived any place else. The employees paid for and received housing, housing maintenance, water, fuel, medical care, recreational facilities, and various maintenance services (including garbage disposal and street cleaning).

The work of Waialua's employees consisted of the following:

1. Preparation of the soil for the planting of sugar cane, irrigating, harvesting, and hauling the sugar cane to the main line tracks for loading into railroad cars. Employees performing only these tasks were held by the trial court to be excluded from the coverage of the Act as "agricultural" workers, and none of them are involved in this petition.

2. Loading the sugar cane into railroad cars, operation and upkeep of the railroad system, and unloading the cars at Waialua's processing mill. For example, petitioner Holmberg was a locomotive engineer devoting his full time to this craft, except for a few hours spent in repairing the railroad equipment. Petitioner Sera was a section hand on the railroad. Petitioner Okouchi was a flagman at railroad crossings, and also did maintenance work along the railroad right of way.

3. Operation of the machinery at the cane processing mill where the cane was manufactured into raw sugar for shipment to the mainland refinery, and the repair and replacement of the mill machinery during the annual three months shutdown period. For example, petitioner Oato operated one of the evaporator stations in the mill and engaged in mill repair work during the period the mill was shut down.

4. Production of steam and electricity for use in the processing mill, the fields, and Waialua Village. For example, petitioner Robello engaged solely in the operation and maintenance of Waialua's power plant.

5. Working as mechanics, carpenters, welders, blacksmiths, tinsmiths, electricians, painters and plumbers engaged in the maintenance of field, mill and village installations and equipment. For example, petitioners Claunan and Ezawa were mechanics engaged solely in mechanical repair work. Petitioner Sunahara was a welder attached to the welding shop. Petitioner Tanaka was a machinist working solely in the machine shop machining parts for all types of field, transportation, mill and village equipment maintained by respondent. Petitioner Takata was a blacksmith working as such on all types of equipment. Petitioner Sakai was a painter, Kashiwabara a plumber, Mori a carpenter.

6. Working as chemists, clerks and laboratory technicians in connection with the horticultural and manufacturing activities of the respondent. Petitioner Pacheco was employed in the laboratory preparing cane leaves for chemical analysis under the supervision of a chief chemist.

7. Working as carpenters, wood cutters, janitors, street cleaners, road graders and other service personnel in connection with the maintenance of the respondent's town. Petitioner Yamada was attached to the carpenter shop and repaired dwellings in the village. Petitioner Crisostomo operated and repaired a grader used to maintain village roads. Petitioner Fernandez was a village cleaner working on the maintenance and upkeep of employees' houses in the village.

Petitioners constitute a cross-section of all of Waialua's employees engaged in the foregoing activities, except those engaged solely in the work of the Field Department.

After making these detailed findings of fact, and appropriate conclusions of law based thereon, the trial court held, in substance, as follows:

1. That each of the employees was, while engaged in any of the foregoing activities, "engaged in commerce or in the production of goods for commerce", as defined by Sections 3(b) and 3(j) of the Act (97 F.Supp. at 218-219; Appendix, pp. 43-46).

2. That those of the employees who were engaged, directly or indirectly, in planting, irrigating, or preparing the soil for planting, or in harvesting, or in hauling the sugar cane from the fields to the corporation's main line railroad tracks, were exempt from the provisions of the Act because engaged in "agriculture" within the meaning of Section 13(a)(6) of the Act (97 F.Supp. at 219-220; Appendix, pp. 46-48). For this reason the claims of a number of employees to overtime compensation were denied. These employees did not appeal to the Court of Appeals. The judgment as to them became final and they are not involved in this petition.

3. That those of the employees while, and to the extent they were engaged in the refining process at and in the mill, were subject to the processing exemption of Section 7(c) of the Act (97 F.Supp. at 222-23; Appendix, pp. 53-56). For this reason, an additional number of employees were denied overtime compensation during work weeks in which they were so engaged.[7] These employees did not

[7]However, the trial court refused to hold that the agriculture exemption applied to these employees.

appeal to the Court of Appeals; however, Waialua did, urging that the basis of exemption should have also been Section 13(a)(6).[8]

4. That those employees performing the other types of work heretofore described were entitled to receive overtime compensation in accordance with the provisions of the Act (97 F.Supp. at 218 ff.; Appendix, p. 43 ff).

5. In those instances where an employee, in a particular work week, performed some exempt and some non-exempt work, the court held that he was entitled to the benefits of the Act for such work week (97 F.Supp. at 232; Appendix, pp. 77-79).[9]

A money judgment was entered in favor of those employees held entitled to overtime compensation in amounts ranging from $30.94 to $174.12 and equivalent amounts as liquidated damages under 16(b) of the Act (totaling $6,729.02). Attorneys' fees in the sum of $2500 were also assessed.

Waialua appealed.

The court below reversed because of error in "approach", holding that *none* of the petitioners was entitled to the benefits of the Act, because none of them engaged in "commerce or in the production of goods for com

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[8]The question of which is the appropriate exemption is therefore still in the case as to eight petitioners. See p. 3, n. 3.

[9]Cf. *Overnight Motor Transportation Co. v. Missel*, 316 U.S. 572, 579, and the "imposing array" of lower court decisions to the same effect cited in the trial court's opinion (97 F.Supp. at 232).

merce" (Appendix, pp. 83 ff.),[10] and also said further that *all* of the petitioners were excluded under the "agriculture" exemption of Section 13(a)(6) of the Act.

SPECIFICATION OF ERRORS TO BE URGED.

The court below erred:

1. In holding that none of the petitioners was engaged either in commerce or in the production of goods for commerce.

2. In holding that the "agriculture" exemption deprived each petitioner of the statutory claims to overtime compensation.[11]

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[10]This was in the face of allegations and admissions in respondent's pleadings that all of the petitioners except those engaged in the upkeep and servicing of Waialua Village were engaged in "commerce or the production of goods for commerce."

[11]Petitioners concede the correctness of the trial court's holding that those employees engaged directly or indirectly in preparing the soil for planting, planting, irrigating, harvesting and hauling the sugar cane from the fields to the railroad cars were engaged in "agriculture" as defined by the Act and therefore exempt from its provisions. They also concede the correctness of its holding that the mill workers, during processing operations, come within the Section 7(c) (processing) exemption of the Act.

REASONS FOR GRANTING THE WRIT.

I. THE HOLDING OF THE COURT BELOW THAT NONE OF PETITIONERS WAS ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE CANNOT BE SUSTAINED.

A. This holding is in conflict with prior decisions of this Court.

Notwithstanding the undisputed evidence, including the stipulation of the parties,[12] that the end product of the work of petitioners, namely, raw sugar, was all shipped from Hawaii to the mainland, the court below, reversing the findings of the trial court, held that none of the petitioners was engaged in commerce or in the production of goods for commerce.

The categorical assertion of the court below that "* * * agriculture is not commerce * * *, nor does agriculture affect such commerce in the constitutional sense" (Appendix, p. 99) cannot be squared with the decisions of this Court. The reliance of the court below (Appendix, p. 99, n. 32) upon *United States v. Butler*, 297 U.S. 1, is vitiated by its own implied recognition immediately thereafter (*id.*) that the later case of *Wickard v. Filburn*, 317 U.S. 111, is to the contrary. Even before the *Wickard*

[12]This stipulation dealt with evidentiary matter and based upon it, as well as the testimony of witnesses, the trial court made its findings of fact and conclusions of law. It was not, as the Court of Appeals erroneously believed (Appendix pp. 86, 93), a stipulation going to ultimate "constitutional" facts. Stipulations as to facts, particularly in complex Fair Labor Standards Act cases, have long been received as appropriate (*Rutherford Food Corporation v. McComb*, 331 U.S. 722, 725; *Puerto Rico Tobacco Marketing Corporation v. McComb*, 181 F.2d 697, 698), and "concessions" respecting commerce coverage (*Kirschbaum v. Walling*, 316 U.S. 517, 519; *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755, 758) and "agreements" respecting the scope of the agriculture exemption (*Bowie v. Gonzalez*, 117 F.2d 11, 17) have been accepted without question.

case, and despite the fact that the *Butler* decision was urged upon it, this Court held in *Mulford v. Smith*, 307 U.S. 38, that marketing of tobacco in excess of established quotas (and therefore its production) could be controlled by Congress in the exercise of its commerce power.[13]

It is therefore insupportable to hold, as the court below did, that petitioners, who are not farmhands, but are full time locomotive engineers, flagmen, railroad maintenance workers, mill workers, plumbers, carpenters, welders, electricians, power plant operators, laboratory technicians, and clerical workers, were not engaged in commerce or in the production of goods for commerce.[14]

Such a holding is flatly contrary to the record, is in conflict with the clear language of the statute,[15] and flies

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[13]Lower federal courts, both in and out of the Ninth Circuit, have had no difficulty in finding the Act applicable to employees of employers engaged in such activities as the dehydrating of alfalfa (*Wyatt v. Holtville Alfalfa Mills*, 106 F.Supp. 624) and the curing and packing of tobacco (*Durkin v. Budd*, 114 F.Supp. 865).

[14]Apparently the court below is entirely out of sympathy with the statute which this Court has said is "remedial and humanitarian in purpose" (*Tennessee C. I. & R. Co. v. Moscoda Local 123*, 321 U.S. 590, 597). On two occasions the court below calls the Congressional enactment "drastic" (Appendix pp. 84 and 97.) On another occasion the court below refers to the Act as "federal bureaucratic control" (Appendix p. 105).

[15]Section 3(b) of the Act defines commerce as "trade, commerce, transportation, transmission, or communication among the several states or from any state to any place outside thereof."

Section 3(c) reads:

> "'State' means any State of the United States or the District of Columbia or any Territory or possession of the United States."

Section 3(j) read, at the time herein involved:

> "'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purpose of this chapter an employee shall be deemed

directly in the face of this Court's decisions.[16] In the landmark cases involving this statute, this Court gave the statutory definition of commerce a scope sufficiently broad to enable the legislation to meet the evil which Congress sought to remedy (*United States v. Darby*, 312 U.S. 100; *Kirschbaum v. Walling*, 316 U.S. 517; *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 88; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564). These rulings have been followed in cases dealing with employees of meat processors (*Rutherford Food Corporation v. McComb*, 331 U.S. 722), and of cooperative irrigation companies furnishing water to farmers (*Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755).[17]

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to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State."

[16]That part of the holding of the Court of Appeals, affecting a small minority of employees, that the village service workers were not "engaged in commerce or in the production of goods for commerce", is, petitioners concede, not directly contrary to any specific decisions of this Court. However, in *Borden Company v. Borella*, 325 U.S. 679, this Court held engaged in commerce for the purposes of the Act elevator operators and other service employees in a 24-story office building largely occupied by a manufacturer shipping goods in interstate commerce. A logical application of this Court's reasoning in that case should result in a holding that the Waialua Village workers here involved are also engaged in commerce for the purposes of the Act. To the same effect are *Kirschbaum v. Walling*, 316 U.S. 517; *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697; *D. A. Schulte, Inc. v. Gangi*, 328 U.S. 108.

[17]The court below appears to doubt the soundness of this Court's decision in the *Farmers Reservoir* case, *supra*.

"It is true that the majority [of the Supreme Court in the *Farmers Reservoir* case] unfortunately accepted the acquiescence of the parties as establishing the constitutional and jurisdictional factor that the employees of a local irrigation company were engaged in a 'process or occupation necessary

This Court, in dealing with the analogous Agricultural Adjustment Act, 52 Stat. 31, 7 U.S.C. 1281, et seq.,[18] has held that the employees of growers of tobacco and wheat are engaged in interstate commerce (*Mulford v. Smith*, 307 U.S. 38; *Wickard v. Filburn*, 317 U.S. 111). Similarly, in dealing with the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U.S.C. 601 et seq., this Court has held employees of milk processors to be engaged in interstate commerce (*United States v. Wrightwood Dairy Co.*, 315 U.S. 110).

B. This holding is directly contrary to decisions of another Court of Appeals involving the same industry and types of work.

In *Bowie v. Gonzalez*, 117 F.2d 11, the Court of Appeals for the First Circuit held that employees of employers who grow sugar cane in Puerto Rico, who operate mills in which the cane is ground, and who deliver the ground

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for the production of goods for commerce.' Thereby the longstanding principle of decision that a constitutional and jurisdictional issue will not be debated or considered unless actively raised by the parties was abandoned. Nor can we accept as an explanation that rationalization leads to quaint results." (Appendix p. 101.)

Whatever this last sentence may mean, it is clear that the court below was in error in suggesting that this Court abandoned a "principle of decision" in the *Farmers Reservoir* case. (See supra, p. 14, n. 12). And even if it thought it were not in error on the point, it should not have undertaken in effect to reverse this Court's decision.

[18] "The Fair Labor Standards Act . . . is part of the social legislation of the 1930's of the same general character as the National Labor Relations Act . . . and the Social Security Act . . . Decisions that define the coverage of the employer-employee relationship under the Labor and Social Security Acts are persuasive in the consideration of a similar coverage under the Fair Labor Standards Act." (*Rutherford Food Corporation v. McComb*, 331 U.S. 722, 723.)

cane for transportation to points outside of Puerto Rico, are engaged in interstate commerce. In fact, that court said that the proposition that such workers are engaged in commerce "is too clear for argument" (117 F.2d at 15).

The same court later had "no difficulty in holding that insofar as the employees are engaged in the transportation of sugar cane from the farm * * * and are engaged in the repair and maintenance of transportation facilities, they are covered by the Act" (*Calaf v. Gonzalez*, 127 F.2d 934, 936).

C. This holding is in conflict with the construction of the Act adopted by, and the long established enforcement policy of the Department of Labor.

In Interpretative Bulletin No. 1 issued shortly after the Act was passed in 1938, the Administrator considered the general coverage of the statute (1944 W.H.Man. p. 16).

After reciting the congressional declaration of policy[19] the Administrator said:

> "From this declared policy of Congress, it is evident that, apart from certain specific exemptions enumerated later in the statute, Congress intended the widest

[19] "In the preliminary declaration of policy in Section 2, Congress recited that it sought to remedy certain evils, namely, 'labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general wellbeing of workers,' which Congress found '(1) causes commerce and the channels and instrumentalities of commerce to be used to perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.'" (1944 W.H.Man. at 17.)

possible application of its regulatory power over interstate commerce; and the Administrator, in interpreting the statute for the purpose of performing his administrative duties, should properly lean toward a broad interpretation of the key words, 'engaged in commerce or in the production of goods for commerce.'" (1944 W.H.Man. at 17.)

As we have seen, this Court in the cases which subsequently came to it confirmed the Administrator's interpretation of the scope of the commerce provisions of the Act.[20]

The departure of the court below from these salutary principles of statutory interpretation in this significant field of labor relations is plainly of importance to the administration of the statute and indicates the propriety of this Court's review.

II. THE HOLDING OF THE COURT BELOW THAT EVERY PETITIONER WAS EMPLOYED IN AGRICULTURE AND THEREFORE WAS DEPRIVED OF THE OVERTIME COMPENSATION PROVISIONS OF THE ACT CANNOT BE SUSTAINED.

As we have seen, petitioners include railroad workers, welders, machinists, blacksmiths, carpenters, chemists, and the like. Yet despite the nature of their employment, and contrary to the specific findings of the trial court, the court below held them all to fall within the exemption for agricultural workers and held that they were not entitled to the benefits of the statute.

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[20]Supra, pp. 15-17.

A. This holding is in conflict with prior decisions of this Court.

In *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, this Court held that the employees of an irrigation company mutually owned by a group of farmers and engaged in furnishing water exclusively to those farmers, were not subject to the agriculture exemption. It was pointed out that whether a particular activity is agricultural in nature depends upon the type of economy in which the activity is organized and carried out:

> "Whether a particular type of activity is agricultural depends in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. *In this way functions which are necessary to the total economic process of supplying an agricultural product, become, in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it.* Thus, the question as to

> whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function *or is separately organized as an independent productive activity.* The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. *But the maintenance man in a power plant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by the farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture.*" (337 U.S. at 761.)

Respondent's operations in Hawaii constitute a classic example of the specialized development of the separate productive functions thus referred to by this Court. The court below therefore erred in failing to apply to the facts of this case, the principles laid down by this Court in the *Farmers Reservoir* case.

B. This holding is in conflict with the decisions of another Court of Appeals involving the same industry and types of work.

In *Bowie v. Gonzalez*, 117 F.2d 11, the Court of Appeals for the First Circuit held that employees similarly situated to petitioners here, were covered by the Act. There the employers operated sugar mills in Puerto Rico in which they crushed sugar cane grown both by them and other growers. They contended that employees who were engaged in transporting the cane to the mills, in processing the cane at the mills, and in transporting the raw

sugar to storage and marine terminals, were agricultural workers and thus were excluded from the minimum wage provisions of the Act. In a carefully reasoned opinion the court rejected this contention, saying:

> "* * * Being a remedial statute, the appellants must bring themselves within both the letter and spirit of the exceptions since they are subject to a strict construction. *Fleming v. Hawkeye Pearl Button Co.*, supra; cf. *Morris Canal Co. v. Baird*, 1915, 239 U.S. 126, 36 S.Ct. 28, 60 L.Ed. 177; *Citizens Bank v. Parker*, 1904, 192 U.S. 73, 85, 24 S.Ct. 181, 48 L.Ed. 346.
>
> * * * * * * *
>
> "The appellants contend that their employees engaged in the production and transportation of raw sugar are engaged in 'agriculture' within the meaning of Section 13(a)(6) and Section 3(f) and are thus entirely exempt from the Act. It is agreed by both parties that those employees engaged in the production and harvesting of sugar cane are clearly engaged in agriculture. The only dispute involved those employees engaged in the mills and the transportation facilities. It is our opinion that the latter are not engaged in 'agriculture' as defined in the statute." (117 F.2d at 16-17.)[21]

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[21]This same case came before the court a second time in *Gonzalez v. Bowie*, 123 F.2d 387, on an appeal by the employees who contended that the District Court erred in its holding on the remand that certain of the employees engaged in transporting the employers' sugar cane to the employers' mills were employed in agriculture. The Court of Appeals refused to review this ruling of the District Court for the reason that the District Court had made the same ruling in its first decision and that the employees had not appealed therefrom. That, of course, is not true here. In any event, whatever confusion may have been created by the second *Bowie* opinion as a result of this situation, was clarified by the subsequent decision of the same court in *Calaf v. Gonzalez*, 127 F.2d 934, which is discussed in the text, *infra*, pp. 24-27.

The court carefully distinguished between the "production" of agricultural products, which falls within the exemption, and the subsequent "processing" of such products which does not.

> "The grinding and processing operation through which the sugar cane goes results in the production of raw sugar. Such an operation is similar to the milling of wheat into flour and the making of cider from apples. These operations are clearly the processing of agricultural products and not the production of them. That this was the understanding of Congress is made abundantly clear by the discussions relative to the bill prior to enactment. See 81 Cong. Rec. 7877-7878." (117 F.2d at 17.)[22]

The reasoning of the court below that the processing of cane into raw sugar comes within the "agriculture" exemption is clearly in direct conflict with this language from the *Bowie* opinion.

The Court of Appeals for the First Circuit further fortified its conclusion by a consideration of the purposes of the statute.

> "Furthermore, it would seem that the employees involved in this case would not fall within the reason

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[22]The court also said:

> "The production of raw sugar is not the preparation of an agricultural commodity in its 'raw or natural state'. It is similar to extracting cider from apples, which was said to be a processing operation and not intended by Congress to be within the provisions of Section 13(a)(10." (117 F.2d at 19.) The court quoted extensively (117 F.2d at 19, n. 6) from the legislative history (81 Cong. Rec. 7877-7878) to support its view.

In its opinion here, the court below took quite a contrary view on the question of whether the making of cider from apples, for example, is within the exemption. (Appendix p. 104.)

for the exemption which was accorded to agricultural employees. The Act was drawn not to include the latter because agricultural labor was not subject to the usual evils of sweatshop conditions of long hours indoors at low wages. Also any attempt to regulate agricultural wages would present a difficult problem since a substantial part of the agricultural workers' income must of necessity be for board and room. The employees in the instant case are typical factory workers or laborers engaged in maintaining industrial facilities. The exemption of the Act is not admissible as an argument to exempt labor in an industry from its operation." (117 F.2d at 18.)

The views so expressed in the *Bowie* opinion are in harmony with this Court's declaration on the point:

"The latter statute, it has been held repeatedly, is to be broadly and liberally applied, in order to achieve its prime objects of distributing and raising standards of employment and living. The Act however contains certain exempting provisions, which are to be narrowly construed in the light of and in order to accomplish the same statutory purposes." (*Levinson v. Spector Motor Service,* 330 U.S. 649, 686.)

In *Calaf v. Gonzalez,* 127 F.2d 934, the Court of Appeals for the First Circuit was presented with the further question:

"* * * whether the employees who are engaged in the *transportation* of sugar cane from the farms of the defendants, who are the joint owners of the farms, the mill, and the railroad system, and the employees who are engaged in *the repair and main-*

> *tenance of such transportation facilities* are covered by the Act." (127 F.2d at 936.)

While the court could have rested its holding that such employees were covered by the Act upon the narrow ground that it was impossible to segregate the operations performed directly for the employer from those performed for others, it refused to do so.

> "* * * we place our decision, however, on the broader ground that the transportation of sugar cane is incident to milling rather than to farming and therefore it is not exempt under the Act." (127 F.2d at 936.)[23]

The same underlying considerations as motivated the decision in *Bowie v. Gonzalez*, 117 F.2d 11, were here present.

> "The scheme of the Fair Labor Standards Act of 1938 is broad and comprehensive with the purpose of including all employees engaged in interstate commerce or in the production of goods for commerce, except those specifically exempted. The Act is remedial in its nature and should be liberally construed and the exceptions to the coverage of the Act should be narrowly construed." (127 F.2d at 937.)

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[23]In *Vives v. Serralles*, 145 F.2d 552, the same court held that workers on outlying farms engaged in hauling sugar cane to railroad "concentration points" were exempt under Section 13(a)(6). However, the court expressly affirmed its decision in *Calaf* and stated that if the precise question were before it, it would hold that the employees *on the railroad* were not embraced within the exemption.

> ". . . we would hold the concentration points as the line of demarcation between 'transportation as an incident to milling' and 'transportation as an incident to farming.'" (145 F.2d at 555.)

In the case of Waialua, the "concentration point" is the same, that is, the point where the raw sugar is deposited alongside the main line railroad for transportation to the manufacturing plant.

In answer to the argument that the owner of the mill and transportation facilities was also the owner of the farm and that therefore the transportation to the mill was an incident to the farming rather than to the milling, the court said:

> "The mere fact that in this case the owners of the farms are also the owners of the mill and the transportation facilities does not make transportation an incident to farming. The issue, therefore, is not whether the same owners manage and control the mill, the farms and the transportation system, but rather whether transportation is incident to farming or incident to milling, an operation specifically within the purview of the Act.
>
> "It is, of course, true that it is easy to verbalize a distinction and say that transportation is incident to milling rather than to farming, but we do not lack guides to aid us in reaching our decision in the instant case. As noted, the workers are all employed by the central. Their names are found on the payroll sheets of the central. The locomotives and the cars have their depot at the mill. The locomotives and the cars move from the mill to the farms and back. The persons engaged in the transportation of sugar cane do no agricultural work. * * * We must draw a line and wherever that line is drawn may appear arbitrary but when, as here, the evidence points in the direction which we have indicated, realizing as we do the purpose of the Act and the narrowness of the exemptions, we are constrained to conclude that the transportation of sugar cane is incident to milling. What we have in the case before us is a mill engaged in the processing of sugar cane and also engaged in the transportation of that sugar cane from farms

> to the mill. There seems no rational basis for saying that simply because the ownership of the mill and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provisions of the Act. We, therefore, hold that all the employees before us are covered by the Act." (127 F.2d 937-938.)

The reasoning of the court below that because Waialua owned the farm as well as the railroad system and mill, it was a "farmer" and its employees were therefore to be deprived of their statutory right to overtime compensation, is directly contrary to this holding of the Court of Appeals for the First Circuit.[24]

C. This holding is in conflict with the construction of the Act adopted by, and the long established enforcement policy of, the Department of Labor.

In September of 1941, and in the light of the *Bowie* opinion, the Secretary of Labor, acting through the Administrator of the Wage and Hour Division, issued a written ruling that in the sugar industry, mill employees did not fall within the exemption of Section 13(a)(6).

> "It would seem from the court's decision that the exemption for agricultural employees provided by the Wage & Hour Law does not apply to sugar mill

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[24]The Court of Appeals for the First Circuit has also held the "agriculture" exemption not applicable to employees of employers manufacturing fertilizers sold to local farmers whose products are subsequently processed and exported (*McComb v. Super-A Fertilizer Works*, 165 F.2d 844) or to employees of a cooperative warehouse engaged in the "stemming" and subsequent handling of leaf tobacco (*Puerto Rico Tobacco Marketing Association v. McComb*, 181 F.2d 697).

employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner in his field." (1944-1945 W.H.Man. 564, note.)

Because of the importance of the issues here involved and the impact of this case upon thousands of sugar workers in the Hawaiian Islands, the Department of Labor has followed this litigation closely since its inception.[25] On both appeals, the Department filed briefs *amicus curiae* in support of the decisions of the trial court.[26]

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[25]The court below states in its opinion that the Department of Labor was "a bitterly partisan litigant" (Appendix pp. 86, 87, n. 11) which "took an active part not only in the trial court, but on both appeals" (Appendix p. 86). This statement is not correct. The Department of Labor took no part whatsoever in either of the trials of this action.

[26]The Department of Labor took no position one way or the other as to the applicability of the Act to the village service employees, but in all other aspects of the case, it supported the conclusions of the trial court. A certified copy of the brief of the Secretary of Labor filed as *amicus curiae* on the last appeal has been filed with the Clerk of this Court.

In that brief the Secretary said:

"As this appeal presents significant questions concerning the proper interpretation and application of the exemptions contained in Sections 13(a)(6) and 7(c) of the Act which are of importance in its general administration and enforcement, the Secretary, with leave of Court, respectfully submits this brief as amicus curiae" (Brief, p. 1).

• • •

The position of the Department of Labor on the various issues involved is stated as follows:

"On the basis of these findings and conclusions the court below entered a judgment with which the Secretary concurs except for a minor difference noted *infra*" (Brief, p. 6).

• • •

"The Secretary of Labor and the Administrator of the Wage and Hour and Public Contracts Divisions have interpreted Section 13(a)(6) as it was interpreted by the court below except that they believe it also exempts employees exclusively engaged in repairing and maintaining equipment and facil-

The decision below also conflicts with the decisions under the analogous Labor-Management Relations Act of 1947 and predecessor statutes and is contrary to the enforcement policies of the National Labor Relations Board. *Pepecko Sugar Co.*, 59 NLRB 1532, involved the employees of another Hawaiian sugar producer whose operations paralleled those of respondent. The National Labor Relations Board there held that the agricultural exemption contained in the National Labor Relations Act, 49 Stat. 449, 29 U.S.C. (1940 ed.) 151, *et seq.*, did not apply to employees engaged in transportation, milling, repair, and clerical work on sugar plantations.[27]

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ities used only in the performance of activities exempt under this section" (Brief, p. 9).

• • •

"The Secretary believes the court below correctly construed the [7(c)] exemption in accordance with the terms of the statute and the previous judicial decisions" (Brief, p. 21).

• • •

"The Secretary believes that the decision below is correct in holding that an employee is entitled to the minimum wage and overtime benefits of the Act for work performed in any workweek in which he performs both exempt and covered non-exempt work" (Brief, p. 30).

• • •

"The judgment of the court below [the trial court] should be affirmed" (Brief, p. 36).

[27] "Although the term 'agricultural laborer' is not defined in the Act, its meaning is not obscure. The guidepost is the ordinary meaning of the phrase, that stemming from common usage and common understanding. The term 'agricultural laborer,' as commonly understood, refers to a person employed on a farm in the cultivation of the soil, including the harvesting of crops and the rearing and management of livestock. Only confusion results from an extension of the meaning of the phrase 'agricultural laborer' beyond its customary sense. If the Companies' argument were accepted, some anomalous conclusions would result: e.g., locomotive engineers, conductors, brakemen, engine oilers, machinists, welders, bricklayers, service station attendants, toolroom attendants, and stockroom clerks employed by the Companies would perforce become agricultural laborers." (59 NLRB at 1537.)

As recently as July of 1953 the District Court for the Territory of Hawaii held that the transportation and milling employees of this very respondent were not agricultural laborers within the meaning of the Taft-Hartley Law, 61 Stat. 163, 29 U.S.C. 141, *et seq.* (*Waialua Agricultural Co. v. United Sugar Workers*, 114 F.Supp. 243.)

The effect of the decision below is manifestly of importance to the administration of these and similar statutes and of itself invites this Court's review. (*Rutherford Food Corporation v. McComb*, 331 U.S. 722, 723.)

III. CONFUSION AND UNCERTAINTY AMONG EMPLOYERS AND EMPLOYEES ALIKE WILL ENSUE IF THIS COURT DOES NOT REVIEW AND REVERSE THE DECISION OF THE COURT BELOW.

The decision of the court below holds in effect that the employees of an employer who processes agricultural products, no matter how widespread the employer's operations and no matter over how many state lines the products travel, are not engaged in commerce and are therefore immune from any power on the part of Congress to control or regulate their affairs. If this far-reaching decision is allowed to stand in the face of prior decisions of this and other courts respecting the scope of the commerce power, widespread confusion and uncertainty among employers and employees and government enforcement agencies is bound to result.

The same result will obtain unless the other holding of the court below that chemists, electricians, locomotive engineers, mill operators, mechanics, carpenters, welders,

plumbers and the like, are "agricultural" employees, is reviewed. It is one thing to recognize that an employee's activities may have to do with the handling of a product of the soil. It is another to say that for that reason alone he is not entitled to the benefits of federal remedial legislation which appears from the legislative history, administrative interpretations, and judicial decisions, to have been passed for his protection.

CONCLUSION.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Dated, San Francisco, California,
September 17, 1954.

RICHARD GLADSTEIN,
NORMAN LEONARD,
Counsel for Petitioners.

Of Counsel

GLADSTEIN, ANDERSEN & LEONARD,
By EWING SIBBETT.

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In the Supreme Court

OF THE

United States

OCTOBER TERM 1954

No. 357

ORACIO MANEGA, ANTONE VIERRA, TAISAO WATANABE, KOICHI OKOUCHI, TSURUO HAYASHI, CORNELIO ASUNCION, ROQUE CRISOSTOMO, PETER HOLMBERG, HATSUSUKE SERA, TAKUMI OKOUCHI, PEDRO DUMLAO, BERNABE HERNANDEZ, DOMINGO GUIGUI, USHINOSUKE KONDO, TERUICHI KUBO, MASAIKI OATO, SIMON CUMLAT, APOLONIO LAZO, GIICHI HAMAMOTO, DIONICIO CARRIT, SERAPHINE ROBELLO, TISHIO TANAKA, BARNEY FARIA, FUMIO SUNAHARA, HIROSAKU TAKATA, ALFRED REYHER, MASARU EZAWA, DAMASO CLAUNAN, ANTONE ROBELLO, YOSHIJI YAMADA, EDWIN MORI, GENJIRO HIRONAKA, JIRO SAKAI, MARGARET FUJIWARA, LOUIS PACHECO, YUKISHIGE TSUTSUI, YACK CHUN LEE, EIKO SAKAGUCHI, MOSES FERNANDEZ, and TOSHIO KASHIWABARA,

Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,

Respondent.

Appendix to
PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

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In the Supreme Court
OF THE
United States

October Term, 1954

No.

Ciraco Maneja, et al.,
Petitioners,

vs.

Waialua Agricultural Company, Limited,
Respondent.

Appendix to

PETITION FOR A WRIT OF CERTIORARI

to the United States Court of Appeals
for the Ninth Circuit.

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Civil No. 787

In the United States District Court
District of Honolulu, Territory of Hawaii
First Division

WAIALUA AGR. CO., LTD. v. MANEJA, et al.

May 3, 1951

OPINION

METZGER, Chief Judge.

Part I.

Statement and Findings.

I.

Nature of Action, Controversy Involved, and Jurisdiction.

This action arises under the Fair Labor Standards Act of 1938, the Act of June 25, 1938, 52 Stat. 1060, 29 U.S.C.A. § 201 et seq. Plaintiff sought a declaratory judgment, and the defendants filed a counter-claim under Section 16(b) of the Act to recover unpaid overtime compensation for work performed by them as employees of plaintiff, and to recover liquidated damages, costs and attorneys' fees.

Following an earlier trial herein, a decision and judgment of this court, reported at 77 F.Supp. 480, and an appeal to the United States Court of Appeals for the Ninth Circuit, this action was remanded to this court for further proceedings by a judgment of the Court of Appeals rendered November 10, 1949, reported at 178 F.2d 603.

Following the remand, all pleadings heretofore filed in this action were amended by the parties, so as to drop certain parties defendant from the litigation, to eliminate the representative character of the case, and to limit the action to the period from November 20, 1946, to and including September 14, 1947.

Under the amended pleadings, the following issues arise with respect to that period of time:

A. Were the defendants or any of them exempt from the overtime provisions of the Act by virtue of Sections

13(a)(6), 7(c), or 13(a)(2), during all or any workweeks falling within the aforementioned period?

B. Were certain of the defendants, while performing work of repairing and maintaining plaintiff's dwelling houses, and while furnishing related facilities and services to the plaintiff's employees and others occupying such dwelling houses, engaged in commerce or in the production of goods for commerce, within the meaning of Section 3(j) of the Act?

C. What, if any, amounts are any of the defendants entitled to recover from plaintiff pursuant to Sections 7(a) and 16(b) of the Act?

These issues are raised by (a) the amended complaint of plaintiff and defendants' answer thereto; and (b) defendants' counterclaim, cross-claim, and cross-complaint under Section 16(b) of the Act, and plaintiff's reply and answer thereto. In addition, defendants seek awards of liquidated damages and recovery of costs and attorneys fees, pursuant to Section 16(b). By its reply and answer, plaintiff seeks to defeat the request for liquidated damages, as well as overtime wages due for the period prior to May 14, 1947, by appealing to the good faith defenses contained in Sections 9, 10 and 11 of the Portal-to-Portal Act of 1947, Act of May 14, 1947, Public Law 49, c. 52, 80th Cong., 1st Sess., 61 Stat. 84, 29 U.S.C.A. §§ 251-262.

All issues have been presented and tried in a single trial. The evidence consists of a lengthy stipulation to certain facts, the testimony of plaintiff's office manager, the testimony of 22 of the defendant employees of plaintiff, and certain exhibits received in evidence, to which reference will be made later.

This case does not involve waiting time, clean-up time, travel time, or any of the types of activity whose consideration occasioned in part the passage of the Portal-to-Portal Act of 1947. Defendants have alleged, it is not disputed by plaintiff, and it is found by the court, that the work performed by defendants for plaintiff, for which recovery is sought in the counter-claim, was the principal work performed by them, was compensable both under an express contract and under custom and practice within the establishments and places where the defendants performed such work, and was performed during portions of the days with respect to which the same was so made compensable; that all such work was in fact paid for by plaintiff, but the dispute between the parties is whether the amounts so paid were sufficient to discharge plaintiff's obligations under the Act for overtime compensation.

This court has jurisdiction of this action and of the parties hereto pursuant to (a) Section 24 of the Judicial Code as amended, 28 U.S.C.A. § 1337; (b) Section 274d of the Judicial Code, 28 U.S.C.A. § 2201; and (c) Section 16(b) of the Fair Labor Standards Act of 1938.

Parties and Period of Time Involved.

Plaintiff is a corporation organized under the laws of the Territory of Hawaii on December 14, 1948. This action was instituted on April 9, 1947, by a predecessor corporation to the plaintiff, bearing the same name. On December 14, 1948, plaintiff acquired certain of the assets and business, and assumed certain of the liabilities, of the predecessor corporation, including all rights, interests and liabilities in, or which might arise out of, this action. By stipulation, plaintiff has been substituted as the party

plaintiff in this action for the predecessor corporation. All subsequent references to "plaintiff" refer either to the predecessor corporation or to the new corporation substituted herein, depending on whether the matters to which they relate occurred prior or subsequent to December 14, 1948.

Defendants are 42 individuals who were employed by plaintiff during the period from November 20, 1946, to September 14, 1947, inclusive. Each of them appears in this proceeding on his separate behalf only, and in no way as representative of any other persons or legal entities. Unless otherwise specified, each performed his work on the plantation.

Summary of Plaintiff's Business.

Plaintiff operates a sugar plantation located in the District of Waialua, City and County of Honolulu, Island of Oahu, Territory of Hawaii. In 1945, it was the third largest producer of raw sugar in the Territory. At the present time the plantation grows and produces sugar cane on 9,663 acres of land owned or leased by it. Substantially all of the land now devoted to sugar cane production has been owned or leased by the plantation and used by it for this purpose since 1910.

As of approximately the commencement of the period covered by this litigation, plaintiff had a total of 959 non-supervisory employees.

Plaintiff's business consists of (a) growing, cultivating, and harvesting sugar cane on the lands owned or leased by it; (b) operating a system of railroad transportation over which harvested cane is hauled to plaintiff's mill; (c)

processing such cane into raw sugar and molasses at the mill; (d) shipping such raw sugar to a refinery situated in the continental United States, where such raw sugar is refined and subsequently sold under the circumstances later discussed herein; (e) shipping molasses in bulk to the continental United States; (f) operating a series of shops for the purpose of maintaining, repairing and overhauling plaintiff's buildings, machinery, equipment, vehicles, and rolling stock; (g) maintaining mill villages and housing in which plaintiff's employees and their families dwell.

Plaintiff processes no cane except that grown by itself on its plantation. Neither does it directly engage in any sugar refining operation. However, plaintiff and 30 other companies engaged in the production of raw sugar in the Territory, constitute the total membership of an association called California & Hawaiian Sugar Refining Corporation, Ltd. (C & H), a California corporation. C & H is qualified as a cooperative marketing association under the federal Capper-Volstead Act, 7 U.S.C.A. §§ 291, 292, and under the applicable laws of the State of California. During the period involved in this litigation the members of C & H, including plaintiff, were under contract to deliver, and did deliver, to C & H, all of the raw sugar produced by them in the Territory, except for inconsequential amounts sold for consumption as raw sugar in the Territory.

In this same period, C & H operated a sugar refinery at Crockett, California. Under the mentioned contract, C & H was entitled to process all raw sugar delivered to it by its members, and to sell the refined sugar resulting therefrom, as well as to sell in the form of raw sugar any quantities

delivered by the members of C & H. Actually, C & H processed into refined sugar more than 90% of the raw sugar delivered to it by its members, selling the balance as raw sugar.

The proceeds received by C & H from its sale both of refined sugar and of raw sugar, as well as any by-products produced by it, were distributed in the following manner. After first deducting the operating expenses of C & H, the remainder was paid over to the members of C & H, including plaintiff, partly in the form of dividends at 6% on the shares of capital stock of C & H, all of which were owned by the aforementioned 31 Hawaii companies—"substantially in the same proportion as the tonnage of raw sugar which they ship to C & H" (Def. Ex. 2)—and the balance was paid over to the same companies, in direct proportion to the amounts of raw sugar delivered by them to C & H.

Plaintiff's Plantation Operations.

Sugar cane is highly perishable. To avoid serious losses it is processed into sugar, syrup or molasses within a relatively short time after being harvested—usually, as the record shows, the practice of processing is between 4 and 16 hours. It "cannot be stored more than 2 or 3 days without spoiling" (Def. Ex. 3B, p. 36).[1] It does not move into interstate commerce in its natural state. Except for small amounts which are used as seed cane, it is grown for the purpose of producing sugar, syrup and molasses. It is these

[1]For this reason and because of the great weight and bulkiness of cane as compared with raw sugar, it must be processed within a few miles of where it is grown.

products, which result from the processing of cane, that become articles of interstate commerce.

Substantially all of the cane-growing land of plantation, its buildings and yard area, and other lands owned or leased by it, but unsuited for cane growing, including a wooded area from which firewood is cut for use for fuel by plantation employees living in the plantation villages, forms a contiguous and compact area. All lands devoted to the growing of cane are managed and operated by plaintiff as an integrated farming unit and single enterprise with identical cropping cultivation and harvesting practices, and with the same labor and equipment.

The growing and harvesting of cane, its processing in the mill, and the shipping of raw sugar to the refiner, take place continuously for a period of approximately 7-9 months. Annually, the harvesting and processing of cane are wholly suspended for the remaining 3-5 months, for the purpose of completely reconditioning the mill and equipment, and installing machinery and improvements.

Plaintiff's buildings, including the mill where cane is processed into raw sugar, and a number of buildings which house repair shops for the maintenance of field, transportation and mill equipment, warehouses for plantation supplies, and other buildings having functional relation to the entire plantation operations, are centrally located in the lowlands of the plantation in a compact area.

Plaintiff's cane field operations are highly mechanized. Since 1910 there has been a gradual reduction in the number of man days required to produce a ton of raw sugar on plaintiff's plantation. This reduction was brought about

through mechanization and the application of scientific methods. To a large extent hand labor and the use of horse-drawn equipment and vehicles have been eliminated, and motorized equipment substituted in their stead.

The transportation system of plaintiff is also highly mechanized, and this is likewise true of the processing operations in the mill.

There is a high degree of coordination between field operations, transportation, mill processing, shipping, and all other aspects of plaintiff's activities. "Operational problems on a sugar plantation are comparable to those of a Detroit factory rather than to those of a large Iowa farm. The primary objective of the management is to maintain 'belt-line production' of sugar by so scheduling the various field throughout the plantation for harvesting and transport to the mill that full-scale raw-sugar production will be continuous, 24 hours a day. To do this it is necessary to maintain a fleet of large trucks, mechanical harvesting equipment, a system of narrow-gage railways (or other means of transporting cane to the mill), a laboratory for scientific observation to determine the water and fertilizer needs with an organized force of workers to implement these findings, and large pumping stations and gravity systems for controlling irrigation." (Def. Ex. 3B, p. 36.)

During the year 1945, plaintiff's direct operating expenses amounted to one and three-quarter million dollars. Of this sum, manufacturing costs approximated five hundred thousand dollars, and an additional sum of approximately two hundred thousand dollars was expended on transportation, in major part for main line hauling of cane

into the mill. The record does not disclose the amount expended for operation of repair and service shops, or for mainterance of employee housing and village facilities.

It appears that plaintiff's railroad system was valued at more than three-quarters of a million dollars (Def. Ex. 2.)

Activities Occurring From the Time Cane Fields are Prepared For Planting up to the Time of Harvesting.

In the preparation and plowing of its cane fields, a so-called "stone boat" sled is used to clear the fields of stones, rocks, and similar obstructions. Concrete irrigation flumes and pipes are moved to their proper location. Sugar cane seed is then planted. The fields are then "ratooned", this being an operation performed after a cane field is harvested to prepare it for the growing of another crop. In the cultivation, herbicides and insecticides are applied, by means of spraying equipment; in the fields, along irrigation ditches and flume areas, and along cane field roads. Weeds are removed, fertilizer is applied to the fields, and water is supplied by a net-work of irrigation ditches, canals, siphons, concrete pipes, flumes, water storage reservoirs and pumps, all of which plaintiff owns, operates and maintains. Ultimately the cane is harvested, loaded into cane cars on portable tracks in the fields, and then moved to the main line railroad.

Throughout the plantation, plaintiff maintains a network of field roads for the transportation of labor, field supplies and equipment.

Intensive irrigation throughout the year is required for the acreage devoted to cane production. Irrigation fre-

quency is guided by soil moistare samples collected weekly from each field. Approximately 97-98% of the water received by plaintiff is utilized for irrigation of its cane fields. The degree to which water is used by plaintiff for irrigation purposes is shown by a tabulation received in evidence. In the year 1940, for example, plaintiff applied 30,548 million gallons; this was a daily average of 84 million gallons. By way of comparison, the city of San Francisco used 65 million gallons daily in the same year (Def. Ex. 3B, p. 43.)

Plaintiff also uses substantial quantities of water to supply its mill, to operate locomotives used on plaintiff's railroad, for the domestic water needs of plantation villages and plaintiff's employees living therein, for sale to small farmers whose produce is consumed locally, and for plaintiff's system of fire protection. The amount so consumed averaged two million gallons daily.

Harvesting Operations.

To insure a balanced flow of cane to the mill, harvesting operations are coordinated with the needs and capacity of the mill, and the potential of its transportation system.

Fields ready for harvesting are first burned over, to increase efficiency in removing the cane and to reduce trash carried to the mill. In preparation for burning, fire brakes are cut through the cane by a tractor bulldozer rake. This tears cane stalks from the stools and pushes cane off to the side.

After the cane is burned, the bulldozer rake opens up lines for the laying of portable track. A portable track plow or leveler follows through these lines to make proper beds for the track. Portable track rail cars, loaded with sections

of track, are drawn into the cane fields by tractors. Lifting machines hoist the track sections from the loaded cars and lay them on the track beds. Empty cane cars are then hauled from the main line of plaintiff's railroad onto a siding thereof into the field for loading purposes, and are placed into position for loading. Cane is loaded on the cars by machines, which are cranes equipped with a boom and a finger-like grab; these pull or grab the cane loose from its growing position and load it directly into the cars. Plaintiff owns 9 such caneloading machines. Full cars are hauled out of the field to the main line for transportation to the mill. A carload of cane averages slightly less than 5 tons per car, gross cane.

Cane pieces along the portable track are later picked up by a ground crew and thrown into cars drawn by tractors. Full cars are dumped near the cane loading machines for subsequent lifting into cane cars. Cane dropped in the fields is bulldozed into piles, and these are later lifted by machine into the cars. This operation is referred to as "brooming cane". Where the main line railroad passes adjacent to the cane field, harvested cane is loaded directly into cars spotted on the main line tracks.

Main Line Transportation.

From the time of its organization plaintiff has owned and operated a narrow-gage railroad system. This system is constructed, located and operated exclusively on the plantation. It hauls no cane or freight for anyone other than the plantation. It is used predominantly to haul sugar cane from points where cane cars have been concentrated to the mill. It is also used to haul portable rails and other sup-

plies and equipment from the plantation's warehouses and shop yards to and from the fields, but most of this type of hauling is handled by the plantation trucks. The plantation has a spur track approximately three thousand feet in length running from its mill and warehouses, and connecting with the railroad line of the Oahu Railway & Lane Company. This spur track was used by the plantation to deliver box and tank cars loaded with sugar and molasses to the O. R. & L. Company, and to receive incoming supplies delivered to the plantation by the O. R. & L. Company. The O. R. & L. Company discontinued its operations at the end of 1947. Since that time the outgoing and incoming freight of the plaintiff has been handled by an independently owned and operated trucking company.

The traintiff's railroad network consists of 56 miles of permanent main line track, hereinafter frequently referred to as "plaintiff's main line railroad", and slightly more than 9 miles of portable track.[2]

The plantation railroad equipment consists of six 25-ton steam locomotives, one 17-ton steam locomotive, one 12-ton steam locomotive, one 12-ton gasoline locomotive, and one 14-ton diesel locomotive, 200 steel cane cars measuring approximately 11 feet by 6 feet by 5 feet, and 512 wooden cane cars measuring approximately 10 feet by 6 feet by 5 feet.

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[2]Portable track laid in the field for harvesting operations lacks proper roadbed for the locomotives. The primary reason for the use of the portable track for harvesting is that permanent track cannot be laid in the field because of interference which would otherwise result in planting and cultivating operations. During the short periods when such track in the fields is in use it is an integral part of the railroad system over which cane cars move directly from the fields to the mill.

For the functioning of this railroad system, plaintiff maintains a roundhouse, employs section men to maintain the main line trackage, employs 10 crossing watchmen to protect the public at government road crossings, employs workers to spray the railroad rights-of-way with a herbicide, employs workers who together with field men pick up cane spilled along the railroad rights-of-way, and employs personnel to operate the trains. Six to nine train crews, with an average of seven, are required daily to handle cane and incoming and outgoing freight. A train crew consists of four men, including a locomotive engineer, a fireman, a front brakeman and a rear brakeman. A cane train averages at least 60 cars, though this number sometimes goes up to 80 or even 90 cars.

Working in the roundhouse are a hostler and an engine wiper, who wash the locomotives and steam boilers, oil and grease the locomotives, fire and steam the locomotives preparatory to the day's operations, and assist in minor repairs to locomotives.

During the off-season, when cane is neither being harvested nor processed, the section men, supplemented by approximately 12 brakemen and 5 firemen, are used in repair and maintenance of main line trackage. Watchmen are used for cleaning and weeding the rights-of-way. Usually one locomotive engineer, two firemen, and three brakemen are assigned to assist the electricians on mill work primarily. One fireman and two brakemen are generally assigned to the welding shop to assist in off-season factory repairs and installation of new equipment. Two more brakemen are sometimes assigned to repair work in the boiling house. One yard engine crew, consisting of an engineer and

several brakemen for the diesel locomotive, is maintained during the off-season. Locomotive engineers not otherwise used assist in locomotive repairs.

Mill Operations

At its mill, plaintiff processes cane into raw sugar and molasses. Raw sugar is there bagged for shipment to the C & H refinery at Crockett, California. Molasses is either loaded for shipment to the continental United States, or stored temporarily in molasses tanks. Bagged sugar and molasses were loaded into railroad box and tank cars of the Oahu Railroad & Land Company, a carrier, which then proceeded with the transportation of these commodities to points of shipment for the mainland.

The term "mill" means the building and equipment of plaintiff used in the actual processing of sugar cane into raw sugar. This includes a cane-cleaning plant and scales, mill carrier, crushing plant, boiling house, fire-room, power plant, sugar warehouse, molasses tank, and all equipment located therein.

Mill operations commence when loaded cane cars are delivered by locomotive on the plaintiff's main railroad, to the mill yard and moved up to the mill. Here the cane is weighed, unloaded, washed, and as much trash is removed as is mechanically possible. These operations take place in the cane-cleaning plant.

After being cleaned, the cane is moved by mill carrier to the crushing plant, is there crushed, and the juices extracted. Sugar juices are then clarified and crystallized in the boiling house. The chief product, which is raw sugar, is then bagged and shipped, or temporarily stored and later

shipped.[3] Molasses is pumped into a storage tank at the mill, and later shipped.

The cane fiber which remains after the extraction of the juice from the cane stalk is known as bagasse. It serves as an economical source of fuel for the production of power. Bagasse produced at this plantation has no marketable value, but is burned in the fire-room, located in the mill, and produces steam. This in turn is used to drive the mill engines and cane processing equipment, to heat and evaporate sugar juice and crystallize the raw sugar, and to generate electric power at the mill's power plant. Steam used for the latter purpose, after passing through generating machinery, is conveyed through lines for further use in processing operations.

The power plant generates electric power. This, however, supplies only about two-thirds of the power needed by plaintiff, so it purchases one-third of the power used by it from the Hawaiian Electric Company, Ltd., an independently owned and operated public utility.

There are times when plaintiff's power system generates more power than it has need of. Because of an existing tie-in between its power system and that of Hawaiian Electric Company, on rare occasions plaintiff feeds back power into the system of Hawaiian Electric. Credit for such power is given to plaintiff in the same manner as though a sale had occurred.[4]

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[3]The plaintiff's temporary storage of raw sugar is never motivated by economic considerations, but is due only to the limited number of cars and limited storage space at the port wharves and occasional interruptions in ship schedules.

[4]Power is not fed back to the Hawaiian Electric lines for the purpose of selling power but only because it is a necessary, convenient and economical method of disposing of the excess power.

Power generated by plaintiff, as well as that purchased by it, is distributed by transmission lines to all the various operations on the plantation, and also to several non-plantation users living in the plantation community. The total amount of power used by non-plantation users is about one-half of one per cent of all the power distributed by plaintiff. None of it is used for or in connection with the production of goods for commerce, or to operate any instrumentalities of interstate commerce, or transmitted into interstate commerce.

In the off-season, when the steam and electric power equipment in the mill are overhauled, plaintiff generates no electric power, purchasing all the power it needs from the Hawaiian Electric Company.

Weekend Shutdown in the Mill.

Production in the mill operations is keyed basically to a 6 day week with continuous and around-the-clock operations divided into three 8-hour shifts. The mill stops grinding cane at 2 p.m. Saturday and starts up at the same time on Sunday. The cessation of grinding operations on Saturday does not, however, result in the stopping of all mill operations. As shown later, in the descriptions of work performed by various defendants, the weekend shutdown period does not extend for 24 hours in regard to the boiling house, the fireroom, and the operations of the power plant.

The weekly shutdown for mill operations is necessary to perform cleaning and minor repair work.

Off-Season.

Although sugar cane can be and is grown the year round in the Territory of Hawaii, efficiency of operations dictates the closing down annually of sugar mills so that extensive general repairs, reconditioning, and installation of improvements can be had. That part of the year when the mill is shut down for repairs is termed the "off-season". While the off-season usually lasts 3-5 months, in the period covered by this litigation it extended only from December 22, 1946, to and including February 9, 1947.

During the off-season, plaintiff conducts no harvesting, cane transportation, or cane processing operations. Field operations continue.

Most of the off-season repair work in the mill is done by employees who, during the grinding season, operate the mill machinery. However, some of this repair work is done by employees of the machine shop, welding shop, blacksmith shop, carpenter shop, and electric shop.

Just as many man-days of work are performed during each 24-hour period in the mill during the off-season as during the grinding season.

Repair and Service Shops.

Both field and mill operations necessitate the equipping and maintaining of complete service shops for prompt minor repairs and emergency work and major overhaul.

Plaintiff operates and maintains a number of repair and service shops which are physically distinct from the mill, housed in separate buildings, and located in an area extending up to 300 feet from the mill building. These shops

employ upwards of 100 men, plus necessary foremen and supervisors. These shops are: machine shop, welding shop, blacksmith shop, tinsmith shop, caneloading machine repair shop, tractor repair shop, garage, electric shop, carpenter shop, paint shop, plumbing shop, and roundhouse.

1. *Machine Shop.*

The machine shop is staffed by 8 employees working under supervision of a machine shop foreman. Practically all of plaintiff's machining work, except heavy work required by the mill, railroad and shops, is done in the machine shop. The grinding of crankshafts for cars, trucks, tractors, and cranes, the machining of emergency parts for such equipment, and machine work on irrigation pumps are performed in this shop. Major locomotive repairs are made by machine shop personnel working with a heavy crane in the welding shop.

Approximately 46% of all machine shop work is for the mill, and 50% for other service departments, including repairs to steam engine driven irrigation pumps. During the off-season, mill work done by the machine shop accounts for from 85% to 90% of the total man hours' work performed.

Work in the machine shop is fairly uniform throughout the year, with peaks in cases of emergency mill repairs and during the mill off-season. Locomotive overhaul is carried out to a limited extend during the grinding season to relieve machine shop off-season work. Steam engine driven water pumps are scheduled for overhaul after the mill overhaul has been completed and after grinding operations are resumed.

A large portion of the work done by the machine shop personnel is performed within the shop, utilizing shop tools. These tools include lathes, hydraulic press, drill press, planer, boring machine and crankshaft grinder. From time to time machine shop personnel are called into the mill to perform repairs, regrooving of mill rolls, and such other work as cannot be expeditiously handled by mill workers.

2. *Welding Shop.*

This shop employs 5 men under supervision of a welding shop foreman. About 46% of its work is for the mill. In the off-season, welding shop work for the mill represents approximately 90% or more of the total man-hours. Most of the welding repairs to mill equipment are made in the shop, although personnel are sometimes dispatched to the point of breakdown.

Steel cane car repairs are made alongside the shop building by the shop personnel. Welding shop employees also operate pipe rolls located in the pipe rolling shed. The pipe which is rolled is generally irrigation pipe 18 inches in diameter or larger. Welding of this pipe is performed by the shop welders. In this work the welding shop employees are assisted by employees from the blacksmith shop or cane-loading machine repair shop.

Welding shop equipment consists of heavy pipe rolls, several sets of acetylene and cutting outfits, acetylene generators, and both stationary and portable welding generators.

3. *Blacksmith Shop.*

This show employs 2 blacksmiths and 2 helpers under supervision of the caneloading machine repair shop foreman. About two days each week are spent by the blacksmiths and helpers on mill work, consisting principally of constructing and reconditioning of cane carrier leveling and preparation knives. Cane car repair work, such as straightening of bars and channels, and repair of tractors and caneloaders, and field implement work, occupy the great percentage of the man-hours in the shop. The work of this shop is uniform throughout the year. Equipment in this shop includes 2 forges, an electrically operated hammer, and a variety of small tools.

4. *Tinsmith Shop.*

This shop employs a tinsmith journeyman and 2 helpers. Mill repair work here is negligible, although light sheet steel work, including maintenance and repair of roof gutters and down pipes, is performed by the shop personnel. Repairs of auto, truck, tractor and caneloader radiators are performed by the shop personnel.

The main work of this shop is the making and reconditioning of tin irrigation scoops. These scoops are used in quantity in the field for the purpose of deflecting water from concrete irrigation flumes to field irrigation lines.

5. *Caneloading Machine Repair Shop.*

Twelve employees and a foreman work here. They perform all major repairs and overhaul of caneloaders, grabs and miscellaneous field equipment. Men from this shop are occasionally called upon to assist in emergency mill repairs.

They also go into the field to repair caneloading machines during the course of harvesting operations.

An important function of this shop is the construction of auxiliary field equipment, such as sub-soilers used in plowing, cane line reshapers used to maintain irrigation water lines in the field, and portable track line leveler attachments used in leveling the lines for laying portable tracks. Repairs on such auxiliary field equipment are also made in this shop, with assistance from personnel of the tractor repair shop.

In the off-season, at least 8 of the 9 caneloading machines are completely dismantled and reconditioned. The 9th machine is reconditioned after harvesting has been resumed. In the off-season, 10 to 12 operators of caneloading machines are brought in to supplement the regular employees of this shop, and to assist in overhaul. Five cane grabs are overhauled and reconditioned during the off-season, and all other cane grabs are repaired. During the harvesting season, 3 new cane grabs are usually built.

Equipment in this shop includes 4 portable welding generators, and 3 portable welding generators mounted on trucks for field repairs. A hydraulic press, overhead crane, motor-driven grinders and a variety of small tools complete the shop equipment. Four welders in the shop take care of welding repairs in the field, and repairs to, and building of, new field equipment.

6. *Tractor Repair Shop.*

Seven employees normally work here, but in the off-season this number is supplemented by 12 to 15 tractor

operators who are brought into the shop from the fields, to assist in repairs. All tractors used in the harvesting field are overhauled in this shop during the off-season. Tractors used for towing cane line reshapers are also overhauled during the off-season. Other tractors which cannot be overhauled during the off-season are scheduled for overhaul at a later date. This may mean that 6 or 7 out of a total of 48 tractors are left for operating season overhaul. Tractor engines are overhauled at regular periods.

Employees of this shop are sometimes dispatched for repair of tractors in the fields. They also assist in repair of field implements in the caneloading machine repair shop.

7. *Garage.*

Personnel employed here numbers 24. Primarily work of the garage is to maintain and keep in repair plaintiff's 98 motor vehicles, consisting of 18 passenger vehicles, 48 pick-up trucks up to one ton, 27 heavy trucks from 1-½ to 7 tons, 1 motorcycle, 2 fire trucks, and 2 panel trucks. Sixty-four of these vehicles are assignel to operations in the fields, 12 to the repair and service shops, 1 to the mill, 1 to the hospital, 2 to the plaintiff's retail store, 7 for administration, 2 are fire trucks, and 9 to the motor pool.

Overhaul of cars and trucks is scheduled throughout the year, except that pick-up trucks used by the harvesting men are overhauled during the off-season. Truck drivers are not used to assist in truck or auto repairs, since there is generally a spare truck to drive when others are being repaired. All such work is performed by the garage mechanics.

Shop equipment consists of 4 overhead cranes, a hoist, valve grinding machine, brake drum lathe, boring machine, tire tools, and a variety of special tools.

Complete servicing equipment is also maintained, together with necessary personnel. Seven full-time employees and one part-time employee perform the lubricating and washing of vehicles. One employee dispenses gas and oil at the yard service station. Six persons are employed as helpers to garage mechanics when there is no service work.

Field service covers the daily lubrication of all equipment and the replenishing of fuel tanks. Tractors, cane-loading machines, portable air compressor, diesel and gasoline locomotives, and all field equipment are serviced daily by a total of 6 men. Two completely equipped service trucks manned by 2 men each service all field equipment, except that in the harvesting fields. In the latter care, a two-wheel trailer, tractor-drawn, is kept in each of the two harvesting fields. Oil, gasoline, diesel oil, greases and water are carried on the trailer together with power-operated grease guns. On man assigned to each trailer services the cranes and tractors in the harvesting fields. In this way service work can be done during lunch hour and slack periods without serious interference with harvesting operations.

8. *Electric Shop.*

Fifteen employees work in this shop. Three of these are mill electricians who divide their time between the mill and the shop, working two weeks in the former, then one week in the latter. The shop maintains electric pumps and transmission lines and performs domestic wiring repairs, including wiring of houses, and the building of new electrical ap-

pliances. Employees of this shop perform necessary work on electrical machines located in the other shops.

In addition to mill repair work done by the employees assigned as electricians to the mill, electric shop personnel may assist them in case of major electrical repairs required. About half of the work in this shop is for the mill. During the off-season, about 70% of the work is for the mill.

9. *Carpenter Shop.*

Twenty-five carpenters and two supervisors comprise this shop's personnel. They perform all carpenter work on the plantation, which includes construction of mill scaffoldings, construction and maintenance of railroad trestles and wooden gates for flumes, and construction and maintenance of cane cars. In addition, they perform necessary maintenance work on the plantation buildings and houses. They also install and maintain steel and concrete pipe lines and siphons. Miscellaneous construction, such as construction of tool lockers, scrapers and strainers, is performed in this shop. Field work, including work on the flumes, railroad trestles, siphons and pipe lines, accounts for about 25% of the work of the employees. Mill scaffoldings and mill building repairs, construction of tool lockers, scrapers and strainers, account for another 10%. Maintenance and repair of plaintiff's buildings and housing account for another 45%. The remaining 20% of the work consists of construction and repair of cane cars. The work is uniform throughout the year, with little change between grinding season and off-season. During the off-season, additional men averaging from 10 to 15 may be brought in from the fields to assist in cane care overhauling and general carpentry work.

10. *Paint Shop.*

Here are employed 5 painters and a supervisor. They perform all painting work on plaintiff's buildings, including housing, and they also occasionally paint siphons and railroad trestles. As a general rule, they do not paint for the mill, this work being done by mill employees. Most of the time of the paint shop crew is devoted to painting of plantation buildings and housing throughout the year. During the off-season, an average of two additional employees brought in from the fields may assist in the work of this shop.

11. *Plumbing Shop.*

Six plumbers and one supervisor work here. They perform all plumbing work on the plantation, including the construction and maintenance of sewer and water systems and plumbing for buildings and housing. Approximately 10% of the time is devoted to mill plumbing work, 15% to field work and the remainder to buildings and housing. Assignments vary little throughout the year. During the off-season, an average of two field employees may be assigned to the plumbing shop as helpers.

12. *Roundhouse.*

Reference to the roundhouse has already been made. It regularly employs two men in the shop, who perform the servicing, cleaning and firing of plaintiff's locomotives. Additional employees are occasionally assigned to this shop to assist in minor locomotive repairs.

Laboratory.

In a separate building, plaintiff operates a laboratory. Various chemical tests are made by the laboratory personnel in the course of all field and mill operations. This work is performed under the supervision of a chief chemist with the assistance of 13 chemists, testers and samplers. By performing careful analysis of various kinds relative to the cane and materials in the course of growing, cultivating and harvesting of cane, and the extraction of the sugar juices, all operations are controlled pursuant to scientific methods.

Determinations of the cane fibre in each field, or variety of cane, are made during each shift. Figures obtained are used in calculating bagasse weights, field distribution and extraction percentages.

Cane leaf analysis is made from samples of cane tops brought in each day and analyzed for green weight mixture, total sugars, nitrogen, potash and phosphate.

Daily tests are made for a variety of other purposes. Tests are made to determine the amount of field trash in harvesting brought to the mill. Continuous samples are taken from the feed roller of the first mill each hour, and also at each change of harvesting, and records of ratios of cane to available sugar are obtained. Extracted juices are sampled to determine the sugar obtained from cane by the milling process. Extracted juices are used to calculate the weight of bagasse. Every three hours samples from clarified juice are taken, to reveal the relative amount of solids being removed by the lime and heat treatment of juices. Purity of syrup is checked. Samples of bagasse are taken every two hours, and ash determinations are also made

twice daily, to determine the influence of different fields on the fireroom. Mixtures of sugar and molasses are tested to determine the amount of sugar lost in the filter cake.

Tests are also made of the mill boiler water, locomotive boiler water, steam pump boiler water, and pump water. Pump water from electric pumps and well water are sampled once each month. Wash water from the cleaning plant and condenser water are also analyzed each shift.

Concrete Products Plant.

In a separate building, plaintiff operates its own concrete products plant. Six men ordinarily staff it, although the number varies from 4 to 10. Work is usually performed on a single shift basis, but occasionally two shifts are maintained.

This plant is engaged primarily in producing concrete irrigation flumes and water supply pipe. It also makes blocks, footings, sidewalk slabs and various other incidental concrete products required by the plantation. Crushed rock used in the manufacturing process is purchased locally, but from 80% to 90% of all cement used is obtained from the continental United States. The work consists of setting up forms, mixing and pouring concrete, removing the previous day's products and arranging them in storage. Cement used is stored in cars which are set on the siding near the plant, or the cement is stored in the cement shed as part of the inventory of general supplies warehousing. In the latter case, unloading of cement is done by the warehouse personnel. Various activities requiring the flumes, pipe and other products receive them direct from the storage area where the products are stored.

The operations do not have any off-season. During the off-season, however, additional personnel may be brought in from the fields. In 1946, the plant produced approximately 46,000 concrete pieces, including flume sections, pipe and other products.

Storage of Supplies.

Materials and supplies purchased for plantation operations are warehoused or stored in several separate buildings located in the plantation buildings and yard area. Value of supplies on hand averages $500,000. The total value of goods procured during a year, including stock and special order materials, averages over $1,000,000.

Most of the materials received were shipped to the plantation from Honolulu on the O. R. & L. Purchases may be either local or by order and direct shipment from continental United States. Freight received is placed in the proper warehouses by the warehousing personnel. In almost all cases railroad sidings permitted placement of the O. R. & L. cars next to the warehouse receiving the materials. The warehousing personnel is not responsible for, nor does it engage in, delivering materials to the various operations or shops.

The principal buildings in which the supplies and materials of the plantation are stored are the general supplies warehouse and the heavy supplies warehouse. They house electrical goods, building hardware, paints, window screening, tractor and caneloading repair parts, copper tubing, pipe stock, metal shapes stock, galvanized sheeting, steel sheets and many other items.

The oil storage warehouse contains lubricants and a limited amount of paint.

Gasoline, fuel oil, diesel oil and kerosene were discharged directly from the O. R. & L. tank cars into storage tanks.

Most of the automotive parts and tractor, caneloading and miscellaneous parts are stored in the garage.

Cement is stored in a separate warehouse. Lime is stored in the mill in the lime room after being unloaded by warehousemen.

Lumber is stored in the open lumber yard adjoining the general supplies warehouse. Herbicides are also stored there.

Fertilizers are usually trucked directly from railroad cars to the field as needed; but if temporary storage is required, they are placed in the sugar warehouse.

The warehousing operations are handled as one unit under a warehouse superintendent with 13 employees. Five clerks perform the bookkeeping and handle accounts. The remainder of the warehouse personnel is employed in the unloading and storing of stocks and materials, keeping stock record cards and taking inventory.

Main Administration Office.

The main administration office is located about 1500 feet from plaintiff's buildings and yard area. The manager, assistant manager, and staff assistants have their offices here. Employees include the cashier, bookkeeper, head timekeeper, 6 assistant timekeepers, 8 clerks, 5 stenographers and typists—a total of 22 employees working under the office manager and his assistant. Four timekeepers keep

the time of the field employees; 2 keep the time of the shop, store, mill, hospital and village maintenance employees. These offices are where payroll records are maintained, and salaries and services paid.

Also housed in this building are the offices of the civil engineer, one assistant surveyor, 2 junior surveyors, and 2 rodmen, who work alternately in the field and in the office. There is also a draftsman employed in this office. The agriculturist and industrial relations sections are also located in the same building.

Stables.

The plantation has one main stable near the plantation buildings and yard area. It uses 38 horses and mules. Horses are used by the harvesting overseer to ride in the fields. Pack mules are used upon occasion to pack seed, fertilizer, broken concrete flumes and other things in and out of the cane fields. The plantation has several feeding stations for horses and mules where they are kept temporarily while work is being performed in a particular area. Three employees are assigned to the work of the stables.

Firewood.

Plaintiff maintains a splitting station in the mill yard. This is equipped with saw and splitting machinery generated by electric power. Firewood, cut by plaintiff's employees at various places on the plantation, is brought to the station to be sawed and split into pieces of appropriate sizes. The uses of such firewood are: sale of firewood to employees and pensioners, for cooking and heating purposes; for heating water at the village bathhouses; and for starting small boilers and heating walls within the furnaces

and pumps used to supply water for irrigating cane fields and for domestic and other uses in plantation villages.

Macadamia Nut Trees.

Macadamia nut groves are operated by plaintiff in an area approximating 121 acres. Such area is not suitable for sugar cane. During the period covered by this litigation, the trees had not yet reached maturity and no nuts were harvested. A nursery for cultivation of young macadamia trees is maintained on the plantation.

Plantation Villages.

At the time plaintiff was originally organized, there was no established community housing, or other facilities, in or near the area which plaintiff proposed to devote to the production and processing of cane. To establish a stable labor supply and house it at places convenient to plaintiff's purpose, plaintiff undertook to create a community, and to supply housing and other necessary services and facilities for its employees. Plaintiff constructed houses, developed services, and built up and established various facilities to serve the needs of permanent living, in plantation villages, of its required number of employees and their families. This was done over a period of years, resulting in the development of Waialua village and several small villages.

Waialua village has all the physical and visual characteristics of an established community and is similar to a typical small town of a farming community center. The area is crisscrossed with government roads and roads constructed and maintained by plaintiff. The community offers the usual services and typical commercial establishments to be found in any small town. There is a company store, or retail store, with two branches; an automotive service sta-

tion; and a hospital. These are owned and operated by plaintiff for plantation employees and their families and non-plantation persons. Plaintiff also built in this area two gymnasiums, one clubhouse, one athletic field, one beach-house, one swimming pool, and two tennis courts, which are available to an athletic association, membership of which is composed both of plaintiff's employees and others in the community.

Additional services and establishments located in the community, which are independently operated, include ten general stores, two restaurants, two fish markets, one candy store, one hardware store, one clothing store, four barber shops, one beauty shop, one photographic studio, two automotive service stations, two motion picture theaters, and one bank. "It must be remembered that the whole plantation area, including the town, is owned by the plantation company, and although there are frequently many shops, such as drug stores, tailor shops, shoemaker shops and the like, that are privately operated, they rent their sites from the plantation and can remain only as long as the plantation permits them to do so. Anyone on any part of the plantation is a trespasser unless he has the permission of the management to be there. * * *" (Def. Ex. 3A, p. 71.)

Also located in the village are a post office, public library, five churches, one intermediate school, one high school, and one day-care center operated by the territorial school system.

For many years, plaintiff's employees occupied plaintiff's dwellings pursuant to a system of perquisites. Under this system, employees received housing, housing maintenance, water, firewood and kerosene fuel, electricity, medical care, recreational facilities and various maintenance

services, including garbage disposal and street cleaning, as a part of their regular compensation as employees of plaintiff. This system was abolished by an agreement dated November 19, 1946, between plaintiff and the International Longshoremen's and Warehousemen's Union No. 145-7, which acted as collective bargaining representative for most of plaintiff's non-supervisory employees. As part of the change thus inaugurated, the value of the perquisites previously allowed to employees was converted, at scheduled rates, into cash wages to be paid by plaintiff by way of wage increase, and thenceforth the employees commenced to pay cash, at scheduled rates, as non-employees do, for the continued furnishing by plaintiff of the aforementioned facilities and services, except that no charge, either to employees or others, was designated for garbage collection, sewage disposal, fire protection, maintenance and cleaning of village roads and similar village services, which continued to be provided by plaintiff. Neither was any charge designated for continued use of parks, playgrounds, plaintiff's clubhouse and gymnasium and recreational facilities generally.

An undisclosed number of plaintiff's dwelling houses are not equipped with tub or shower facilities. For the inhabitants thereof, plaintiff maintains bathhouses. From November 20, 1946, when perquisites were terminated, until April 30, 1947, no charge was made for use of the bathhouse, except as this was included in the rent paid by employees for the dwelli..g houses. Commencing May 1, 1947, and throughout the balance of the period covered by this litigation, plaintiff instituted a system of charges for use of the bathhouses: 50c per family per month, and 25c per month in the case of a single man without dependents.

At the present time, the dwelling houses owned by plaintiff number 820, all located on the plantation. Most of them surround the buildings and yard area located near the mill. These houses, together with the business establishments of the community, constitute the village of Waialua. There are 335 houses which are scattered over the plantation, but these too are located in clusters and form small villages.

No employee covered by the existing collective bargaining agreement, including each employee defendant herein, is required as a condition of employment to live on the plantation or in plantation houses or to use any service or facility that the plantation may be in a position to render its employees. The relationship that exists between the plantation and its employees who live in plantation houses is that of landlord and tenant. However, of the total number of 959 non-supervisory employees of plaintiff, only 16 live off the plantation in houses not supplied or owned by plaintiff. The remaining employees and pensioners, together with their families, an aggregate of 2952 persons, all inhabit dwellings owned by plaintiff and generally located in Waialua village, or one of the other plantation villages owned by plaintiff. Plaintiff also rents to non-employees, totaling 421, dwellings not occupied by employees of plaintiff. Some of these persons work off the plantation altogether; others are persons who own, operate or are employed in the independently controlled businesses located in plaintiff's plantation villages.

The relationship between an individual's employment with plaintiff, and his occupation of a company-owned house, is shown, as testified to by 22 of the defendants, in the following tabulation:

Defendant	How long employed by plaintiff	How long has lived in house owned by plaintiff
Claunan	20 years	20 years
Crisostomo	26 years	26 years
Cumlat	Over 10 years	20 years
Faria	40 years	44 years; bought own home in June, 1950
Fujiwara	12 years	Lives with her family, which has occupied company-owned house for over 30 years
Hayashi	Over 15 years	25 years
Holmberg	23 years	(Not testified to)
Izawa	22 years	36 years
Kobota	23 years	23 years
Koshiwabara	26 years	26 years
Lorenzo	14 years	14 years
Maneja	23 years	23 years
Mori	16 years	34 years
Oato	14 years	30 years
Pacheco	7½ years	27 years
Reyher	25 years	29 years
Robello (S)	28 years	45 years
Sunihara	20 years	26 years
Takata	20 years	39 years
Tanaka	11 years	All his life; was born in company-owned house
Watanabe	17 years	5 years
Yamada	24 years	All his life; was born in company-owned house; father was employee of plaintiff.

Plaintiff has established a fire protection system at the village of Waialua, and as part of that system operates two fire trucks. It also maintains fire hydrants in and about the village, the mill, various buildings in the yard area, and at various other locations.

There is a cemetery, located on plaintiff's property, for its employees and their families.

Prior to the abolition of the perquisite system, employees of plaintiff performed the work of maintaining and keeping in proper repair the dwelling houses owned by plaintiff, and the village area, and in supplying the usual services necessary to the operations of a community. This has continued without change. Under the mentioned collective bargaining agreement, plaintiff expressly undertakes to provide dwelling maintenance and repairs, and village services; and in this connection, not "to make housing a profit-making venture, as such."

Organization of Plaintiff's Plantation.

At all times involved herein, plaintiff has been a member of the Hawaiian Sugar Planters' Association (HSPA), an organization of Hawaiian sugar-producing plantations. The association publishes a manual, portions of which were received in evidence as Defendants' Exhibit 2. Major enterprises of the association, as set forth in this manual, are quoted in a publication of the United States Department of Labor, entitled "The Economy of Hawaii in 1947", Bulletin No. 926, prepared and transmitted to the Congress of the United States pursuant to a requirement contained in the Organic Law of the Territory of Hawaii, 1900, as amended

April 8, 1904, 33 Stat. 164, 29 U.S.C.A. § 7. A copy of the publication was received in evidence as Defendants' Exhibit 3B. An earlier report of the Department of Labor, also rendered pursuant to the provisions of the Organic Law of the Territory, was published under the title, "Labor in the Territory of Hawaii—1939", Bulletin No. 687, House Document 848, 76th Cong., 3rd Sess. A copy of this report was received in evidence as Defendants' Exhibit 3A.

As described in the manual issued by HSPA, its functions are these:

"The Hawaiian Sugar Planters' Association is an organization of plantations and individuals united for the purpose of cooperative improvement of the island sugar industry as a whole * * * The association's major enterprises are divided into the following departments: Experiment station, bureau of labor and statistics, labor saving devices committee, boiler inspection committee, public relations committee, labor relations committee, legislative committee.

"The association acts as a clearinghouse for all activities of the industry, making possible the freest and quickest interchange of information among the plantation executives. It maintains an office in Washington, D. C., which handles all relations of the Hawaiian sugar industry with Government departments and the Congress." (Def. Ex. 3B, pp. 34-35.)

This statement of the functions of HSPA is supplemented as follows: "The plantations are organized in an association which has planned for the Hawaiian sugar industries as a whole and which has developed the whole framework of economic relations necessary to their exist-

dental to farming and therefore not exempt under Section 13(a)(6). Calaf v. Gonzalez, supra, 127 F.2d at pages 936-937. In Vives v. Serralles, supra, the agricultural exemption was held to end at the point of concentration of harvested cane, and this point was fixed as of the time when cane loaded into cars was moved from portable track onto the main line permanent tracks; at this point the dividing line was fixed between activities exempt under Section 13(a)(6), and activities not so exempt.

This seems a useful, logical and necessary point of cleavage. It is also in accord with plaintiff's long-established practice, in the maintenance of its records, of separating field activities from transportation at the point where cane cars are placed on the main line railroad.

The sole object of plaintiff's operation is the production of sugar and molasses; and as these are manufactured in its mill, it might well be argued that operation of the mill is the dominant element, and that the growing of the raw material, sugar cane, is the subordinate or incidental element. It serves no purpose to resolve such an argument, for it is clear that plaintiff engages in many separate enterprises which, taken together, constitute a hybrid type of business, see Phillips, Inc. v. Walling, 324 U.S. 490, at page 495, 65 S.Ct. 807, 89 L.Ed. 1095.

Hauling cane on the main line railroad is not a part of harvesting operations, since the gathering of the crop is completed on the fields on which it is grown prior to transportation; and such transportation constitutes neither a storing of such crops, nor transportation either to storage or market. Transportation, as plaintiff engages in it, is a necessary preliminary to the operation of plaintiff's proc-

ence on an industry-wide basis, including shipping, the purchase of fertilizer, equipment and other supplies, the development of mainland refineries and markets, the supervision of management labor policies, the maintenance of research laboratories and the formulation of common programs of action for combating plant diseases, insect pests, and soil problems." (Def. Ex. 3B, p. 33.)

A further aspect of plaintiff's organization is found in its relationship to Castle & Cooke, Ltd., an agency or factor with which it is connected (Def. Ex. 2). Concerning the relationship that exists between plantation and factor, the HSPA manual declares as follows: "While each of the 36 plantations in the Hawaiian Islands is a corporate entity, all their affairs, except the actual operation of sugar growing, are centralized in what are known as factors, general agents offering a multitude of services to their clients. There are five principal factors: Alexander & Baldwin, Ltd., American Factors, Ltd., C. Brewer Co., Ltd., Castle & Cooke, Ltd., T. H. Davies & Co., Ltd." (Def. Ex. 3B, p. 35.)

The functions of the factors are summarized as follows in the HSPA manual:

> "Financial.—All fiscal matters of the plantations are handled by specialists in the offices of the factors. Moneys are received and disbursed, tax statements prepared, water and land rents paid or received, surpluses invested, or deficits advanced.
>
> "Experimental.—Engineers and other technicians are constantly seeking ways to improve the output of the various client plantations.
>
> "Shipping.—All the multitudinous detail of shipping huge quantities of sugar by water to the mainland is in the hands of the factors.

essing business in its mill, where the cane undergoes a substantial change in order to create raw sugar, from which state it is later further transformed into refined sugar, the main product which is sold.

Portable track is laid on the fields where cane is grown; but the permanent main line transportation is not located on the farm in the same sense. True, it is located on the plantation property, but the word "plantation" refers simply to the geographical area of nearly ten thousand acres on which plaintiff conducts all its operations. Obviously cane is not grown on the right-of-way occupied by the fifty-six miles of permanent main line railroad track. Land is set aside exclusively for railroad purpose.

The point where the main line track is joined by the portable track is the point at which harvested cane is concentrated for transportation, and at this point the agricultural exemption activity ceases and the railroad operation commences.

The court finds that employees who are employed in or on the roadbed, track, structures, cars and locomotives of plaintiff's main line railroad system, including roundhouse and rolling stock, repair and building shops, and flagmen, watchmen and dispatchers, are not exempt from the overtime provisions of the Act.

Mill.

(6) Plaintiff contends that employees whose work is performed in the mill are exempt under both Section 13(a)(6) and 7(c). Mill activities commence immediately after the produce has been delivered into plaintiff's storage yard and brought alongside unloading platforms. Processing be-

"Merchandising.—Through their mainland buyers, the factors provide a steady flow of needed merchandise to plantation stores and to the plantations themselves. Because of the size of their operation, everything a plantation and its personnel need is provided at a minimum cost." (Def. Ex. 2.)

The significance of the factor system is stated as follows: "The long-run result of the agency system was thus to deprive the plantations of their independence and to transfer control to the factors, a control which has been further unified by the co-ordination of policies and planning in the central offices of the Hawaiian Sugar Planters' Association." (Def. Ex. 3B, p. 35.)

These developments, as well as many other aspects of plaintiff's operations, would seem to be unique to the Territory of Hawaii.

"In the sugar-producing areas of Louisiana, Puerto Rico, and Philippines, and the sugar beet States, a farming system had been established before the development of the sugar industry. As the farmers in those areas already owned the land, sugar production grew along the lines of the established farming system.

"The Hawaiian sugar industry, on the contrary, began on land which was undeveloped. * * * The land tenure system in Hawaii is different from that in any other part of the United States. It is a complex outgrowth of the feudal system which existed before annexation, under native Hawaiian royalty." (Def. Ex. 3B, pp. 32-33.)

The typical Hawaiian sugar plantation has been described as a "small world in itself (Def. Ex. 3A, p. 70), whose "structural organization and functioning * * * is not unlike

that of an army, with its clear cut lines of authority and its careful program for attaining given objectives" (Def. Ex. 3A, p. 14).

In immediate charge of plaintiff's plantation is its plantation manager, who is shown in a chart appearing under the designation "Plantation Organizations" in the published manual of HSPA (Def. Ex. 2), to have over-all control of all plaintiff's operations on the plantation, including conduct of plaintiff's villages. The designation of the manager, and the authority exercised by him, have been described as follows:

> "The manager of the plantation is appointed by the controlling 'factor' or agency. He has wide authority over the plantation and the mill and exercises a considerable influence over all community activities. * *
>
> "The plantation manager was the chief official and central authority on all aspects of plantation life. In addition to his technical knowledge regarding sugar production, he had final responsibility in the direction and operation of sewerage and water systems, of the fire-protection systems, police force, the railroads, and performed many of the functions that a mayor would perform. He even sat as an informal judge on cases involving minor disturbances and petty larcenies." (Def. Ex. 3B, pp. 36, 39.)

Departmentalization of Plaintiff's Operations.

Plaintiff maintains an elaborate system of keeping detailed records of all its costs and expenditures. All pumps, locomotives, t..cks, tractors, machines and implements of machinery are given identification numbers, and a record is made of the hours of work performed in their maintenance, repair, and utilization. For each employee a daily

timesheet is kept showing in detail what his work consisted of, and to which operation or piece of equipment it pertained. This information is transferred to a weekly time record, which also carries data concerning the employee's rates of pay for the jobs performed by him and his total compensation for the week. By use of a further series of numbers, plaintiff records whether a given piece of work represents a capital improvement or a running expense charge.

It appears from the testimony of plaintiff's office manager (Tr. 43-53) that its practice for nearly 20 years has been to keep separately identifiable sets of employee records for its several departments. The main departments were described by him as follows:

1. Service Department, which includes the railroad and truck operations, and the various shops: " * * * such as the track shop (section repair shop), the P & H shop (caneloading machine repair), the welding shop, machine shop, paint shop, electric shop * * *."

2. Factory Department, which covers employees of the mill, commencing with "the employee who, when the can car comes alongside the mill, weighs it and participates in the job of releasing the cane from the car into the container, the conveyor," and ends with the loading of sugar into freight cars or the warehouse adjacent to the mill.

3. Warehouse Department.

4. Field Department, which embraces "preparing for plowing, planting, ratooning, cultivating, irrigating, fertilizing, * * * up to the time that the cane was put on the main line of the plantation to take to the mill * * * in other words, where the permanent transportation line took over."

5. Village Facilities Department, covering painters, plumbers, carpenters, and others who repaired, maintained, and serviced plaintiff's villages, and the dwellings located therein and occupied by plaintiff's employees.

In addition to these main departments, there are a number of others, also separately maintained. These were identified as the office department, laboratory, civil engineering, hospital, truck department, and agricultural control and research.

The foregoing lengthy statement of the extent, nature, and methods of operation of this large agricultural industrial enterprise is culled from testimony and largely from a detailing written stipulation between the parties of 771 pages, to which is attached a printed contract between the company and HLWU Local 145, Unit 7, together with numerous maps, charts, and tabulations, all of which is a material part of this trial.

This corporate enterprise was organized over a half century ago and has shown continuing expansion and development. With the exception of a few years, it has been quite profitable to its agents and shareholders.

Part II

Commerce Coverage.

(1) The activities of plaintiff described above constitute the operation of an industry which is engaged in commerce and in the production of goods for commerce. Included in these activities are a number of separate and distinct enterprises appropriate to the production of sugar and molasses under the many and unique circumstances out of

which plaintiff's operations have developed and taken form. In the conduct of these enterprises, plaintiff has assumed a variety of functions including those of farmer, carrier, manufacturer, shipper, and operator of village communities. Plaintiff is, and the court finds it to be, subject to the provisions of the Fair Labor Standards Act.

Coverage under the Act for employees, so as to entitle them to the benefit of minimum wage protection, and payment of overtime for hours of work in excess of 40 per workweek, depends on whether they themselves are engaged in commerce, or in the production of goods for commerce, Section 6(a) and 7(a) of the Act. Whether an employee is to be held covered as one engaged in the production of goods for commerce depends on whether he was employed either (a) in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods; or (b) in any process or occupation necessary to the production thereof, Section 3(j) of the Act. By Congressional amendment in 1949, the words "closely related" have been inserted in the aforementioned section before the word "process", and the words "directly essential" have been substituted for the word "necessary"; but this amendment was not made retroactive, and has no application to the issues of this case.

Plaintiff does not dispute that its employees, with the exception of a single group, are engaged in commerce or in the production of goods for commerce, within the meaning of the Act. The exception referred to relates to the work of certain employees who perform the work of repairing and maintaining plaintiff's dwelling houses, and furnishing related community facilities and services to those who

occupy such houses, these being in the main employees of plaintiff. As to such maintenance and repair employees, the contention of plaintiff is that, while so engaged, they are not in any process or occupation necessary to the production of goods for commerce. Determination of this aspect of the case is deferred to a subsequent place in these findings. It is appropriate to find at this point, and it is found by the court, that all activities of the defendants other than those concerning which the issue of coverage under Section 3(j) is raised, are and have been within the coverage of the law, such employees being either engaged in commerce or in the production of goods for commerce.

Recovery under the Act has two aspects. An employee is excluded if his activities are such that he is engaged neither in commerce, nor in producing goods for commerce (or engaged in an occupation necessary to production). On the other hand, an employee may be covered by the Act because he is engaged in the production of goods for commerce or in an occupation necessary to such production, but may not be entitled to the overtime protection of the Act because of the applicability of one or another of the exemption provisions. In this case, plaintiff relies on the following exemption provisions: Section 13(a)(6) (agricultural activity), Section 7(c) (sugar processing), Section 13(a)(2) (retail or service establishment) and, in one instance, Section 13(a)(1) (administrative or supervisorial activity).

The record shows that in numerous weeks various defendants worked for hours beyond 48, and in all such instances, hours of work beyond 48 were compensated at overtime rates; this includes employees engaged in agri-

cultural activities. Overtime was also paid for hours in excess of 8 per day, for work on certain designated holidays, and when an employee was called to work on his scheduled day off. Since 1943, office and warehouse employees have received overtime for hours excess of 40 per week; and during the off-season, overtime has been paid for hours in excess of 40 per week to mill and shop employees.

The recovery of overtime pay sought in this action by defendants is limited to hours in excess of 40 per week, up to and including 48.

Agricultural Activities.

(2) Plaintiff contends that all of its employees are employed in agriculture, as the term "agriculture" is defined in the Act, and are therefore exempt from the entire operations of the Act, pursuant to Section 13(a)(6) thereof. The definition of "agriculture" contained in Section 3(f) is sufficiently broad to cover every operation of preparing the soil, cultivation, growing of the sugar cane, harvesting, and any practice performed by a farmer or on a farm either as an incident to or in conjunction with such farming operations, including preparation and delivery to market where this is done by farmers. An employee is therefore exempt from the protection of the Act by virtue of Section 13(a)(6) if, only if, his work falls within the specific language of Setion 3(f). Such, too, has been the interpretation expressed by the Administrator of the Act (Interpretative Bulletin No. 14).

(3) Under this definition, activities exempt from application of the Act with reference to the growing of sugar

cane at plaintiff's plantation, include the preparation of suitable seedbed in the cane fields; planting; ratooning; cultivating; spraying of fields with insecticides and herbicides; elimination of competing weed growth; clearing of stones; spreading of irrigation water and operation of irrigation controls; laying, moving, or removal of field irrigation flume; patroling of irrigation ditch lines; cleaning and weeding of irrigation reservoirs, drainage ditches and tunnels; fertilizing and other activities to improve the physical condition of the soil; fire protection; activities designed to guarantee or improve the growth of the crop; grading if cane fields; filling of holes, gulches and ditches in fields; and harvesting operations performed to remove the crop from its growing position in the fields. These constitute farming operations, together with those activities of an incidental and conjoint nature, such as the picking up and reloading of cane stalks which have fallen from cars, the laying and shifting of sectional tracks in the fields, and the loading and moving of cane cars placed upon movable tracks and assembling the harvested crop at centralized points on the main line railroad, to commence transportation to the mill. Employees engaged in such operations, or in activities incidental or in conjunction with them, are eliminated from the protection of the Act while engaged in such practices.

In accordance with these findings, the work of defendants which falls into one or another of the categories specified above, is exempt from operation of the Act, up to and including the point at which the crop is harvested. That point, which terminates the agricultural aspect of plaintiff's operations, occurs with the concentration of cars loaded with cane, upon the main line railroad operated by plaintiff,

for transport, through intermediate processing, to the sugar refinery.

Transportation.

Plaintiff contends that the operation of its main line railroad, and the work performed by its locomotive engineers, firemen, brakemen, and other employees connected with its railroad transportation system, are exempt both under the agricultural exemption of Section 13(a)(6) and the sugar processing exemption of Section 7(c). The latter section exempts employees engaged in the processing of sugar cane into sugar (but not refined sugar), but only when they are employed in a place of employment where the employer is engaged in the act of processing cane. The Administrator has interpreted this section to exempt employees who directly engage in processing activities, or who perform operations so closely associated thereto that they cannot be segregated for practical purposes, and whose work is also controlled by the irregular movement of commodities to the establishment; provided that such work is performed in the place where the processing actually occurs (Interpretative Bulletin No. 14). Congressional debates show that the purpose of the section was to relieve processors of seasonal agricultural commodities from the hours provisions of the Act so as to enable them more easily to conduct their operations during the peak seasons (Interpretative Bulletin No. 14).

(4) Neither Section 13(a)(6) nor 7(c) applies to the activities of plaintiff's railroad employees. The train crews are not engaged in any act of producing sugar cane, or in any act incidental to or conjoint with the production of sugar cane; nor in processing cane into sugar at the mill,

where the processing occurs. It is immaterial that they are employed by the same company which employs the farm-hands and processing crews, since the determination of coverage must turn on the work of the employee.

> "The mere fact that in this case the owners of the farms are also the owners of the mill and the transportation facilities does not make transportation an incident to farming.
>
> * * * * * * *
>
> "There seems no national basis for saying that simply because the ownership of the mill and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provisions of the Act." Calaf v. Gonzalez, 1 Cir., 127 F.2d 934, 937, 938.

In determining whether an employee is exempt from the Fair Labor Standards Act either under Section 7(c) or Section 13(a)(6), the sole criterion is the character of the work performed by the employee, as disclosed by the record Walling v. Jacksonville Paper Co., 317 U.S. 564, 63 S.Ct. 332, 87 L.Ed. 460; A. B. Kirschbaum Co. v. Walling, 316 U.S. 517, 62 S.Ct. 1116, 86 L.Ed. 1638; Walling v. Snyder Min. Co., D.C., 66 F.Supp. 725. Section 7(c) does not embrace activities which, though related and necessary to mill operations, are not performed conjointly with processing at the establishment where processing takes place.

Railroad operation is a systematic business calling for the employment of skilled, experienced men, trained to quick, keen perception (not farm hands or mill hands) for handling locomotives and moving cars (not the goods in transit), and for the maintenance of roadbed, track and

structures, and roundhouse care and servicing of locomotives—all specialized technical work. Railroading is not farming or processing, nor intended by the Act to be a part of either. Here, the transportation operations are very substantial, occurring over many miles of trackage, and hauling hundreds of thousands of tons each year; and the investment in the railroad system, amounting to nearly a million dollars, is quite considerable. It is notorious that in years past some sugar plantations in Hawaii hired a common carrier utility company, whether from economy or lack of capital, to install a railroad system, to perform the work of hauling cane from fields to mill yards.

If Congress had said that raw *sugar production* should be given an exemption from the operation of the Act, a different situation would be presented. That Congress saw fit not to do this, is in itself significant. The parts of the Act here dealt with exempt agricultural or farming activities on the one hand, and processing on the other. The exemptions are separate and different, one of them applying both to minimum wages and overtime hours, and the other applying only to overtime hours. The transportation system of plaintiff is such that it constitutes a separate activity, so distinct in its nature that it is not reached by either of the exemptions.

Evidence given by plaintiff's office manager establishes that the employees of the railroad system are not attached to the Field Department or the Factory (Mill) Department, but instead are carried on the payroll records of the Service Department. Plaintiff has not treated the railroad employees as within the exemption of Section 13(a)(6), for during off-season these employees have paid paid overtime after 40 hours of work. Subsequent findings on the activi-

ties performed by the railroad employees disclose that they are not ordinary farm hands, and do not perform agricultural activities. The railroad system is operated as a year-round pursuit; the element of seasonality does not enter into sugar production in the Territory of Hawaii. "Continuity of employment in the production of Hawaiian sugar is comparable to employment in manufacturing operations that have minor seasonal fluctuations rather than to typical mainland agricultural operations. The equitable climate of Hawaii makes possible the continuous growth of sugar and it is technically possible to carry on every type of operation every day in the year" (Def. Ex. 3B, p. 64).

(5) The operation of the railroad, as disclosed by this record, is not a practice performed "in conjunction with" farming operations. The activities of the railroad crew, and of those employed in activities relating to maintenance, upkeep and operation of the main line railroad system, occur subsequently to and independently of the farming activities, albeit coordinated thereto. On its records of operating costs, plaintiff distinguishes between harvesting and main line transportation.

Nor is the operation of the main line railroad "incidental" to the farming activities. The Administrator of the Act regards transportation as more closely linked to processing operations. This has been his view since 1943 (Administrator's Release G-322). This view finds support in several decisions of the United States Court of Appeals for the First Circuit dealing with the Puerto Rico sugar industry, Bowie v. Gonzalez, 117 F.2d 11; Calaf v. Gonzalez, 127 F.2d 934; Vives v. Serralles, 145 F.2d 552. In those cases it is held that the transportation of cane is not inci-

gins with the weighing, unloading and cleaning of the cane, and continues through crushing, juice treatments, crystallizing, and the bagging of the product and its removal from bagging and sewing machines, and its deposit in an adjacent warehouse, bins, tanks, or directly into cars or trucks for shipment. With these several operations through the factory, the processing is begun and finished in the place where the processor is so engaged, that is to say, the entire operating plant devoted to processing usage; whether within the mill itself or in the open yard, and whether the work there performed is mechanical or manual.

Such activities are not exempt under Section 13(a)(6). The mill operations are so conducted as to assume the character of a distinct business enterprise of an industrial nature; hence the mere fact that the processor is also engaged in producing a farm crop, and is processing only commodities grown by him, does not bring all of his operations within the Act's definition of "agriculture". The processing of sugar cane is surely no less an industrial operation than the steamming and fermenting of leaf tobacco; these activities were held to be non-agricultural because they changed the form and nature of the crop. McComb v. Puerto Rico Tobacco Marketing Cooperative Ass'n, D.C., 890 F. Supp. 953, affirmed 1 Cir., 181 F.2d 697.

The mill operation is not a subordinate part of farming; it constitutes a large operation that follows the pattern of the industry in the Territory of Hawaii. A separate work force is employed for the processing operation in the mill; it does no work in the fields; it is paid in accordance with a scale of hourly rates which are different and distinct from the system used, partly at contract rates and partly at

hourly rates, to pay farm labor. On its payroll records, and in the keeping of its accounts for purposes of making income tax returns, plaintiff segregates mill employees from those engaged in field activities. During off-season, plaintiff pays overtime after 40 hours to employees of the mill, but not until after 48 hours to employees engaged in the farm work.

The Court of Appeals for this circuit has warned against enlarging the term "agricultural laborer" beyond the usual idea that it suggests. Enlargement beyond common usage would produce only confusion. The test laid down is whether the product has been subjected to industrial activity. Industrial activity commonly means the treatment or processing of raw products in factories, North Whittier Heights Citrus Ass'n v. NLRB, 9 Cir., 109 F.2d 76, certiorari denied 310 U.S. 632, 60 S.Ct. 1075, 84 L.Ed. 1402, rehearing denied 311 U.S. 724, 61 S.Ct. 54, 85 L.Ed. 472. This decision, although interpreting the agricultural exemption of a different act, has been widely followed in its basic reasoning, and has recently been reaffirmed in Miller v. Burger, 9 Cir., 161 F.2d 992.

The determination of this court is supported by the views recently expressed both by the Solicitor of Labor and the Administrator of the Wage-Hour Division (2 CCH 14,068-14,071). Since 1941, the Administrator has taken the position that the exemption for agricultural employees "does not apply to sugar mill employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner in his own fields" (Administrator Release R-1568, published in 1942 ed. WH Manual, p. 408). It is also the current view of the Board which administers the National

Labor Relations Act, which by Congressional direction contains the same definition of "agriculture" that is to be found in the Fair Labor Standards Act. In Re Imperial Garden Growers, 26 LRRM 1632; 91 NLRB No. 167. See also Vives, Bowie, and Calaf cases, supra.

(7) It is clear, however, that the activities under discussion are covered by the sugar processing exemption. Accordingly, the work of employees which takes place in the mill, in connection with the operation of processing machinery and activities closely and intimately connected therewith, are exempt under Section 7(c).

(8) Several activities, while occurring in the mill, are not exempt because they do not constitute a part of the processing operations. Activities performed on bagasse, a by-product which is used for fuel, are not exempt because such activities do not constitute the processing of cane to obtain sugar or syrup, nor is it processed to obtain bagasse. The exemption is limited to the processing of cane into sugar or into syrup. This finding coincides with the long-established view of the Administrator (Interpretative Bulletin No. 14).

(9) Where an employee's activities are connected with generation of electricity, some of which is used in the mill, but also in many other operations, including the lighting of employees' houses, administrative offices, repair and service shops, and the sale of surplus amounts to a public utility company, the exemption does not apply because of the commingling of exempt with non-exempt activities in the same workweek. The matter of commingling is later discussed in greater detail in these findings.

Weekend Shutdown.

At the earlier trial, the defendants contended and the court held, that the activities in and about the mill during weekend shutdown, which consists of cleaning and minor repairs, were not exempt under Section 7(c), for the reason that they occur at a time when no processing is taking place. In consequence, an employee who performed 40 hours of exempt work in connection with processing operations, and additional hours of work during the weekend shutdown, was held to be non-exempt for the entire week.

Upon additional evidence and a new record in this retrial, and reconsideration of this issue, it would appear that the weekend activities in the mill should not be held to defeat the exemption provided by Section 7(c). While the shutdown period consists of 24 consecutive hours, processing operations are not completely suspended during that interval. The crystallization processes of sugar remaining in the machines continue. Key employees in the fireroom, boiler room, and power house remain engaged in their regular activities. Though it is impossible to circumscribe with exactness the period during which no processing of sugar, in the literal sense, takes place, it would seem that such period comes to but a few hours, less perhaps than a full working shift, and partaking partly of the end of one shift and partly of the early portion of the next.

(10) Employees who engage in the weekend cleaning and repair activities, work solely within the mill, and upon the very processing machinery which they operate during the remainder of the week. These employees also do the same kind of work while the mill is in operation, as an incidental activity connected with processing. In such cir-

cumstances, and in light of the exemption which Congress intended should be enjoyed under Section 7(c), the non-processing activities in the mill during weekend shutdown would appear to be too incidental and subordinate a factor to defeat exemption.

Accordingly, the court finds upon this record that the activities performed during weekend shutdown in the mill are not such as to defeat exemption, if it is otherwise applicable.

Off-Season.

The annual shutdown of the mill during the so-called off-season is a period when there is a total cessation of processing operations. Machinery and equipment located in the mill are completely overhauled, major repairs are made, and new machinery is installed. Generally the mill is shut down for a period of between 3 and 5 months. According to the evidence, plaintiff's off-season lasted 5 months in 1941; 3½ months in 1942; 3½ months in 1943; 4 months in 1944; 3½ months in 1945. In 1946, it ran from December 22 to February 9, a period of 7 weeks; this was an ususually short off-season, and doubtless relates to the occurrence of a strike lasting from September 1 to November 19, 1946.

During the off-season, mill employees engage exclusively in major cleaning and repair work, in overall preparation for the subsequent reopening of the mill. Additional men are brought in from other departments to participate in the overhaul which occurs in and about the mill, its machinery and equipment. Field employees are brought into the repair and service shops, to supplement the regular crews, because of the increased load of work. These facts not only establish the substantial nature of the off-season operation

in preserving and enhancing capital investment,[5] but also account for the maintenance by plaintiff of a stable labor supply throughout the year, during which the number of man-hours of work performed does not vary, regardless of season.

Not a particle of sugar is processed in the off-season.

(11) It is plain, and the court finds, that the work which takes place in the mill during off-season is not exempt under Section 7(c). This holding produces no inconsistency with the finding in regard to weekend shutdown, inasmuch as the two differ vastly in purpose, nature, scale, and duration.

It has long been the Administrator's view that the exemptions provided by Section 7(c) do not apply during any dead season or off-season, when processing activities are suspended entirely for a substantial and prolonged period of time (Administrator's Release R-1892; Jan. 25, 1943). This view has been uniformly upheld by the courts. Such was the ruling in the sugar industry in Puerto Rico in the case of Maisonnet v. Central Colosso, Inc. 2 WH Cas. 755; and the decision has been the same in reference to the cotton seed processing industry. Heburg v. Independent Til Mill, Inc. 5 WH Repts. 777 (W.D.Tenn.); Abram v. San Joaquin Cotton Oil Co., D.C.S.D.Cal., 49 F. Supp. 393.

It is also worthy of note that plaintiff has paid, for a number of years, and throughout the period covered by this action, overtime for hours of work in excess of 40, to all

[5] In October 1947 the HSPA Plantation News stated: "Estimates of the amount of money being spent in 1947 and 1948 for improvements and new equipment on sugar plantations run as high as $20,000,000 and actual outlays may be even higher." (Def. Ex. 3B, p. 40.)

mill hands, employees of the repair and service shops, and others who participate in the off-season work in and about the mill.

Repair and Service Shops.

Plaintiff claims that the employees of its repair shops are exempt both as agricultural employees and under the sugar processing exemption.

(12) The agricultural exemption of Section 13(a)(6) is inapplicable. Machine shop men, welders, electricians, painters, carpenters, and others employed in the repair shop department, perform no work of an agricultural nature, or at a time or place conjoint with or incidental to the farming process, or on a "farm" in the sense in which that term is used in the statute. Plaintiff itself has always regarded these employees as a unit separate from the field employees. In the structure of plaintiff's business, agricultural workers comprise the Field Department; employees of the repair shops comprise the Service Department. Workers in these respective categories are carried on separate and distinct pay-rolls. For cost accounting and income tax return purposes, plaintiff makes the same distinction in its records between these departments. As subsequent findings show, plaintiff has never treated repair shop employees as falling under the agricultural exemption, inasmuch as, during off-season, repair shop employees have been paid overtime for hours of work in excess of 40 per week; this, of course, is a payment not required to be made to employees engaged in agricultural work, whether it be off-season or grinding season.

(13) Neither is Section 7(c) applicable to exempt these employees. Their work is not that of engaging in process-

ing, or in any part of processing, nor is their work so integrated with processing as to be a portion thereof, incapable of segregation. Plaintiff has not treated the repair shop employees as part of its mill operations. Payrolls and cost accounting records for income tax purposes show the employees of repair shops separately from the mill hands. The activities of repair shop employees relate not alone to the mill, but to all aspects of plantation operations, including the field, village facilities, administration building, etc.

Repair shop employees are not occupationally attached to the mill. The headquarters out of which they work is in each instance a separate structure, in which they generally perform the major portion of their work, to which they regularly report each day, and in which they receive supervision and instruction. These structures are located at varying distances, up to 300 feet, from the mill. When occasion requires them to be elsewhere than in their shops, they perform services for every operation on the plantation, not the mill exclusively. Most of them do not generally perform work inside the mill building, except during off-season, when processing is suspended. They are under separate foremen and supervisors. There is not interchange shown, during the grinding season, of personnel, equipment, or materials between the mill and the repair shops.

It is plain that the repair shops constitute, and they are found to be, self-sufficient units, operated not as an incident to any other operation exclusively or dominantly, but rather as an integral part of the overall combination of separate enterprises jointly conducted by plaintiff. If the employees of an independent machine repair shop performed the repair activities under discussion, they would not be exempt from the overtime provisions of the Act. The fact that such

work was done by employees of plaintiff, under the circumstances here presented, affords no stronger basis for applying the exemption.

This determination coincides with the view expressed by the Administrator, both in his official releases (Interpretative Bulletin No. 14) and in the position asserted in a brief filed by him in this case with the Court of Appeals. Judicial authority treating of the same issue likewise supports this finding. In Walling v. Bridgeman-Russell Co., 2 WH Cas. 785 (District), Judge Bell held that the term "place of employment" as used in Section 7(c) means those portions of the establishment devoted by the employer to the actual processing operations, hence the exemption does not apply to employees who perform their duties at places not devoted to processing operations. He held the exemption inapplicable to electricians, carpenters, tinsmiths, firemen, engineers, garage employees who washed and greased trucks, watchmen, janitors warehousemen, and laboratory technicians, although the degree of separateness and specialization in that case does not appear to approach the situation in the instant case.

In Walling v. DeSoto Creamery & Produce Co., D.C.Minn., 51 F.Supp. 938 at page 943, employees who worked at grading, packing and loading poultry, in a room adjacent to the one where slaughtering and dressing operations occurred, were held not employed in a place of employment where the exempt processing activity was performed; this was the holding despite the fact that the activities held nonexempt were performed on the processed product. In the case at bar, the employees under discussion do no handle cane, sugar, syrup, or molasses; their activities are confined to working on machinery, equipment, and structures.

The crucial point is that Section 7(c) does not exempt entire industries from the overtime provisions of the Act, but only the specific processes therein mentioned. Thus, while the activities of employees engaged in handling, slaughtering and dressing operations in a meat packing plant were held exempt, employees in other departments, such as those engaged in meat-curing and sausage-making, were held outside the scope of the exemption provided in Section 7(c). Fleming v. Swift & Co., D.C., 41 F.Supp. 825, affirmed 7 Cir., 131 F2d 249. To the same effect, see Colbeck v. Dairyland Creamery Co., 70 S.D. 283, 17 N.W.2d 262. See also Shain v. Armour & Co., D.C., 50 F.Supp. 907; and McComb v. Del Valle, 80 F.Supp. 945.

Mill Village Maintenance.

Plaintiff contends that its employees who perform repair and maintenance work on company dwellings occupied by plaintiff's employees, and who supply village services and facilities to the employees living in the plantation villages where these houses are located, are excluded from coverage under the Act upon the ground that they do not work in any process or occupation necessary to the production of goods for commerce. Alternately, if this contention is overruled, plaintiff invokes the exemptions of Section 13(a)(6) and 13(a)(2).

The question of coverage is plainly one that must be decided upon the facts peculiar to each case. The Administrator has expressly left the question of coverage open, evidently recognizing that decision might well vary with the given situation. No court decision has been found that passes squarely on facts similar to those here present.

Work of a repair and service nature has frequently been held covered by the Act as a type of activity necessary to the production of goods for commerce. A few decisions of this kind may be noted: Repair of boats used in interstate commerce Walling v. F. S. Lowe & Son Boatways, 5 WH Cas. 937; mechanical work for an independent machine corporation whose chief business consisted in servicing the tools and equipment of a company engaged in mining and shipping of coal in interstate commerce Princeton Mining Co. v. Veach, 5 WH Cas. 734; painting, repairing, and reconstructing trucks which were brought to the employer's plant and by customers who owned them, and which were used in the interstate transportation of goods, Walling v. Sturm & Sons, 6 WH Cas. 131; maintenance men, mechanics, and mechanics' helpers who worked at garages on trucks leased by their employer to customers making substantial used of the trucks in interstate commerce, Skidmore v. Casale, Inc., 6 WH Cas. 33. Also to the point are Claudio v. Sobrinos De Portilla, Inc., 5 WH Cas. 484, holding the Act applicable to employees of a corporation operating a factory and machine shop, the greater part of whose business was the repair and servicing of industrial concerns producing sugar for commerce; and Agosto v. Rocafort, 5 WH Cas. 176, holding the Act applicable to a mechanic engaged in repairing and overhauling trucks operated by an employer in a trucking business used chiefly to transport cargo from concerns producing sugar, to be shipped in commerce.

Maintenance workers, watchmen, and similar employments have also been held covered. These employments were held covered in McComb v. Russell Co., 17 Lab. Cas. 76, 781; by the United States Court of Appeals for the Fourth Circuit in Slover v. Mathes, 140 F.2d 258; by the United

States Court of Appeals for the Seventh Circuit in Engebretsen v. E. J. Albrecht Co., 150 F.2d 602; and by the Supreme Court in Walton v. Southern Package Corp., 320 U.S. 540, 64 S.Ct. 320, 88 L.Ed. 298, and in A. B. Kirschbaum Co. v. Walling, 316 U.S. 517, 62 S.Ct. 1116, 86 L.Ed. 1638.

These decisions are readily distinguishable from the situation at hand, in that the employees involved therein performed work or services in, upon or directly relating to the very buildings, equipment, or instrumentalities which were used in the production of goods for commerce. The case here presented is one step removed, in that the repair and maintenance work is performed in and upon, and the service is rendered for, the dwelling houses inhabited by plaintiff's production employees.

A series of cases, which have come to be known as the cookhouse or cafeteria cases, deal with an analogous situation. In Consolidated Timber Co. v. Womack, 132 F.2d 101, the United States Court of Appeals for this circuit held the Act applicable to a baker employed in one of two cookhouses operated by a corporation engaged in logging and lumbering. It was held that the cookhouse was a necessary part of the company's production of goods for commerce, operated not with the intent or purpose of showing a profit to the owners from the sale of food or service, but rather to render a necessary assistance to the company's business, which was that of producing logs in interstate commerce: "The cookhouse was not a separate or independent establishment; it was actually a *part* of the Company's facilities —a link in the chain—whereby it operated its business and a means whereby it accomplished the purpose of its exist-

ence. Neither cookhouse was in competition with any private restaurant for there is no evidence of an effort to secure the patronage of the general public; the service was sold at cost to those whom the cookhouse was intended to serve: the loggers. The principal activity of the cookhouse definitely was not to furnish service to the consuming public, as such, but was to serve the employees of the Company." 132 F.2d at page 107. The job of the cookhouse employee was held to assist the activities of the loggers by keeping their board close to their place of work, thus rendering it easier for the corporation to maintain a proper organization of its loggers, and forwarding their work by furnishing the food whereby the men were given the strength to pursue their labors.

Many cases are in accord with this decision. The United States Court of Appeals for the Eighth Circuit, in Hanson v. Lagerstrom, 133 F.2d 120, followed our circuit, holding the Act applicable to one who assisted in preparing and serving meals, and maintaining a kitchen operated to benefit employees of a concern engaged in handling pulpwood, which was then converted into products sold in interstate commerce. A federal district court in Indiana held the Act applicable to a night manager employed by the owner of a cafeteria located in a war plant, to serve employees working in the plant who manufactured war materials shipped in interstate commerce; the cafeteria, though independently owned, was held an integral part of the organization of the manufacturer, and a necessary part of the facilities used by the manufacturer, Ferguson v. Prophet Co., 6 WH Cas. 284. A federal district judge in Massachusetts similarly applied the Act to employees working in their employer's commissary, which was located in a railroad station and

served as a kitchen and storeroom for the employer's retail stands and train service department in the same station, and for the employer's retail stands in railroad stations in other cities, Walling v. Armstrong Co., D.C., 68 F.Supp. 870. Employees in a canteen and cafeteria operated, on premises of Republic Steel Corporation, by an independent restaurant concern were held covered in McComb v. Factory Stores Co., D.C., 81 F.Supp. 403; coverage of the Act was there decided in favor of cooks, assistants, counter girls, dishwashers, and porters. The Supreme Court of Michigan held the Act applicable to employees engaged in preparing food at plant cafeterias owned and operated by a large industrial corporation which sells food solely to plant workers during their lunch and rest periods, Basik v. General Motors Corp., 311 Mich. 705, 19 N.W.2d 142, 159 A.L.R. 966.

The foregoing decisions turn on the finding that the work performed by such service employees is itself a part of an over-all integrated effort for the production of goods for commerce. Supplying such services, and maintaining such supply, constitute activities covered by the Act, where they have a close and immediate tie with the process of production for commerce. Although each case depends on its own facts, the decisive elements are suggested by our Court of Appeals in Womack's case, supra, 132 F.2d at page 107: "Was not the greater number of diners at the cookhouses engaged in the production of goods for commerce? Were not the cookhouses an integral part of an organization devoted to the production of goods for commerce? Does it not follow, reasonably and logically, that the greater part of the services rendered by the cookhouses was in interstate commerce, rather than intrastate?"

Three decisions reaching a contrary result are easily distinguishable, and are based upon reasoning which supports the principle of Womack. Kuhn v. Canteen Food Service, Inc., D.C., 77 F.Supp. 585, dealt with a restaurant operated, not by an employer engaged in the production of goods for commerce, but by an independent concern; and it was not operated as a part of facilities devoted to production of goods for commerce. Judge LaBuy accepts the principle laid down in Womack's case, saying, 77 F.Supp. at page 591: "The court is convinced that in cases where the production of goods is in an isolated spot where board cannot be readily obtained by employees, that (sic) it would be necessary for the company to furnish board to its employees, and in such cases the furnishing of the board would be a necessary part of the production of the goods."

Again, in Bayer v. Courtemanche, D.C., 76 F.Supp. 193, 196, a similar case was presented. Judge Smith there said:

> "* * * there has been no showing that the time for lunch was too short for the production workers to eat outside, nor that restaurants were not available nearby, nor that the service in them was inadequate for the workers in the area, nor, indeed, that any great proportion of the production employees of the plant availed themselves of the cafeteria at meal times.
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> "Had any of these elements been shown by the plaintiff, it might be that his work could be considered necessary * * *."

Judge Yankwich also found against coverage in Tipton v. Bearl Sprott Co., D.C., 93 F.Supp. 496, where a restaurant, not operated by Columbia Steel Company but by an independent contractor, was maintained at most as a convenience for employees at Columbia Steel, at a location in a

city where numerous other restaurants were immediately available to Columbia's production workers. In a well-reasoned opinion, the court reviews the cases and bases its decision upon the fact that the cafeteria was operated independently of the company producing goods for commerce, was not located in any isolated area, was not shown to be patronized by any substantial number of the steel company's employees, and represented only a convenience to such employees rather than a necessity; furthermore, that the steel company did not control the hours, wages or conditions of work of the cafeteria employees, and such cafeteria was in no way a part of Columbia's effort to produce steel.

In the case at bar, existing conditions are such that it has been necessary for plaintiff to furnish housing and community services to its production employees. The plaintiff's villages are located both in isolation and insulation from the rest of the Territory; these villages are located upon plaintiff's lands, and are many miles from any city. No other housing in adequate quantity, except that provided by plaintiff, is shown to be available to plaintiff's employees. Historically, plaintiff constructed these houses and established these villages for the purpose of supplying necessary dwellings for a stable labor pool which plaintiff desired to be in close proximity to its operations.

Maintenance of village facilities and dwelling repairs were carried on by plaintiff as a part of its over-all production operations, not as a matter of mere convenience for its employees. Many of the employees of plaintiff who work on dwellings, and in connection with village facilities, are a part of plaintiff's production operations, being at-

tached to various of the repair shops, such as the carpenter, plumbing and paint shops, which perform activities for the mill, in regard to production machinery and equipment, and for administration and office buildings. Housing and community services represented part of the wage payment made to plaintiff's employees in the form of perquisites. Abolition of the perquisite system in 1946 did not nullify either the original purpose of the housing, or the continued effectuation of that purpose. Indeed, plaintiff expressly undertook a contractual obligation with the union representing most of the defendants, to continue to furnish repairs and maintenance of housing, and village community services. At the same time, plaintiff expressed its intention not to make housing a profit-making venture as such.

More than 98% of plaintiff's employees inhabit its houses, and rental to outsiders is negligible; and among the latter are various individuals to whom plaintiff also rents space to operate commercial establishments needed in the villages. Doubtless the present availability of housing for rental to outsiders is related to the continuing mechanization of plaintiff's operations which naturally decreases the number of employees needed. The fact that the present relationship between plaintiff and its employees in regard to housing appears to be one of landlord-tenant, does not conceal the underlying realities. It is the duty of the court to look through the form to the substance. The 1946 conversion of housing and facilities into cash values, merely meant that these amounts were added to the employee's paycheck, but he paid back the same amount to the company as rental. Hence the form changed, but the substance remained unchanged.

Upon the foregoing facts, there can be no question that the operation and conduct of village facilities and housing are historically and presently an integral part of plaintiff's production effort. The only relevant court decisions passing upon repair work to homes occupied by employees of a concern engaged in interstate commerce, deal with city homes occupied by employees under genuine lease or sale arrangements. One such case is the decision of the federal district court for the Western District of South Carolina in Morris v. Beaumont Mfg. Co., 84 F.Supp. 909, 910. The Act was there held inapplicable to carpenters and painters engaged in the construction, maintenance and repair of residences rented by a textile manufacturing concern to its employees. The company owned an average of 280 dwellings, occupied by an average of 488 employees. The total average number of employees of the company was 1107. Occupancy of company-owned residences was optional with employees, and on the average more than half of them lived in homes owned by themselves or rented from parties other than the employer. All the residences owned by the company were in the city of Spartanburg, located on city streets, and interspersed with other dwellings not owned by the employer. The company's manufacturing plant was enclosed by a substantial fence within which all of its manufacturing activities were carried on; none of the houses were contained within the fenced area. The key to Judge Timmerman's decision is seemingly his finding that "The defendant does not maintain a mill village in the sense that term is commonly used."

A similar decision is that of the District Court for the Western District of Virginia, in Coomer v. Durham, 93 F.Supp. 526, 529. The employer was a contractor who con-

structed and sold houses to the employees of a company engaged in the production of coal for interstate commerce. The coal company had at one of its operations 547 employees, of which number 412 lived in houses not owned by or rented from it, 75 lived in a village in houses purchased from the coal company, 42 lived in houses purchased by them in an entirely different village, and only 16 lived in company-owned houses. At all of its operations, the company had a total of 3251 employees, of which number 1334 lived in houses rented from it, 217 lived in houses purchased from the company, and 1700 lived in their own individual houses which had never been owned by the company. The villages in which the employees lived were not isolated communities; they were located on state highways linked with the federal highway system, and near to other communities. It was found that the coal company, from the start of construction, "planned to sell nearly all these houses and did sell virtually all of them just as soon as they were completed." Such sales, it was pointed out, were accomplished by a conveyance in fee simple by deed to the purchasers without restriction as to subsequent lease or resale; and subsequently to the original purchase, some of the purchasers had either rented or sold their houses to persons in no way connected with the coal company. Judge Barksdale found that it was not necessary, during the period of time covered by the case before him, for the coal company to provide housing for its employees. The contractor's employees were therefore held not covered by the Act.

In Wilson v. Reconstruction Finance Corp., 5 Cir., 158 F.2d 564, 565, certiorari denied 331 U.S. 810, 67 S.Ct. 1199, 91 L.Ed. 1830, the Act was held inapplicable to employees acting as firemen at a housing project, and to others who sup-

plied water service to the inhabitants thereof, the inhabitants being production employees of two corporations engaged in interstate commerce. However, the firemen and water plant operators were employees of an independent contractor not so engaged in interstate commerce. The court there said, "The independence of the employer of the plaintiffs and the employers of the housing occupants insulates the plaintiffs from the status of producers of goods for commerce."

The last three decisions, while holding against coverage, present a rationale which, when applied to the facts of the instant case, support a different conclusion. In origin and history, Waialua village was and remains a mill village, company-owned and company-controlled, in every sense of that term. The same is true of the smaller villages on plaintiff's plantation where its employees occupy company-owned dwellings. All these villages, and all of the buildings, houses, and other facilities existing therein, were created by plaintiff for the purpose of providing housing and community services for a stable supply of labor. These villages are located within the plantation area, and Waialua, the largest of them, was established in close proximity to the mill. Not only does plaintiff own the homes, but also the other services and buildings necessary to community life—the hospital, gymnasium, parks, playground, clubhouse. The opportunity to occupy or use any portion of these communities, their facilities and the dwelling houses therein, has always rested exclusively with plaintiff. Ingress and egress are subject to plaintiff's control.

While plaintiff's employees are not required under the collective bargaining agreement to live in company-owned

houses, there is no evidence that they have any real choice over the matter. The possibility of purchasing homes of their own seems to be a remote and rare occurrence; the unique system of semi-feudal land tenure plays a role. Only to an inconsequential extent is it possible for employees to rent, at suitable locations near to their places of work, houses owned by anyone other than plaintiff. It cannot be assumed to be accidental that, of 959 non-supervisory persons employed by the company, in the period to which this suit relates, only 16 lived in houses other than those owned by plaintiff.

The work done by plaintiff's employees in maintaining and keeping in proper condition the housing occupied by its production workers, is neither trivial nor insignificant to plaintiff's business of producing sugar. It represents a material contribution to plaintiff's production of sugar. Without the performance of such repair and maintenance work, plaintiff's housing and village facilities would fall into disrepair. Its employees would be unable to continue to occupy them, and there would be marked interference and damage to the continuation of production of goods for commerce. The close relationship between the maintenance of the mill villages and the production of cane and manufacture of sugar, is exemplified by the fact that mill village maintenance employees, such as carpenters, painters, and plumbers, perform their work indiscriminately both on the buildings and facilities used by plaintiff to conduct its production operations, and on the dwelling houses. Occupation by plaintiff's production employees of its housing is to be considered in connection with the fact that plaintiff hauls many of its employees from their homes in the mill villages to and from their job sites. In the operation of its business,

plaintiff has departmentalized its activities: the plumbing shop and paint shop have personnel comprising intact groups who perform necessary work both on plaintiff's production buildings and its housing. In the case of carpenters, all are attached to the carpenter shop, without segregation between village carpenters and industrial carpenters, except as to timekeeping.

It is in the light of these facts that decision must be made of the question presented. That question is whether the work of mill village repair and maintenance is "necessary" to the production of goods for commerce. Judge Healy has pointed out that the term "produced" is broadly defined in the Act. Culver v. Bell & Loffland, Inc., 9 Cir., 146 F.2d 29, 32. The Supreme Court has said that the word "necessary", as employed in the Fair Labor Standards Act, should not be applied in a manner that would give it an unwarranted rigidity; it is a word "to be harmonized with its context", Armour & Co. v. Wantock, 323 U.S. 126, 130-131, 65 S.Ct. 165, 167, 89 L.Ed. 118. The issue there decided was whether a firefighting service was sufficiently necessary to the operation of a soap factory, to entitle such service employees to coverage under the Act. The Supreme Court said:

> "* * * no hard and fast rule may be transposed from one industry to another to say what is necessary in 'the production of goods.' What is practically necessary to it will depend on its environment and position * * *. What is required is a practical judgment as to whether the particular employer actually operates the work as part of an integrated effort for the production of goods.
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> "A court would not readily assume that a corporation's management was spending stockholders' money

> on a mere hobby or an extravagance. The company does not prove or assert that this fire protection is so unrelated to its business of production that it does not for income-tax purposes deduct the wages of these employees from gross income as 'ordinary and necessary expenses.' "

(No claim is advanced by plaintiff that its expenditures for wages to its employees and for other purposes in the maintenance and repair of dwellings and village facilities, are not included in its income tax returns as part of its expenses of operation, 26 U.S.C.A.Int.Rev.Code, § 23(a)(1). "More is necessary to a successful enterprise than that it be physically able to produce goods for commerce. It also aims to produce them at a price at which it can maintain its competitive place, and an occupation is not to be excluded from the Act merely because it contributes to economy or to continuity of production rather than to volume of production." Armour & Co. v. Wantock, supra.

(14) Accordingly, the work performed by carpenters, painters, plumbers, and others was covered, because they contributed to "The maintenance of a safe, habitable building", A. B. Kirschbaum v. Walling, 316 U.S. 517, 524, 62 S.Ct. 1116, 1120, 86 L.Ed. 1638, which was, in turn necessary to house, maintain, and keep in desired proximity to plaintiff's operations, employees whose work involved them directly in the production of goods for commerce.

Whether since the amendment in 1949 of Section 3(j), such employees are covered for future work, is not here presented. The sole question for determination deals with the period between November, 1946, and September, 1947, which antedates the recent amendments. Hence, decision

here is confined to the Act as it read at the time of the activities over which the suit has been brought and no intimation is intended as to the effect, if any, of the 1949 amendments of Section 3(j), particularly since the factual picture may have undergone change since 1949.

(15) It remains to determine whether the exemptions of Section 13(a)(6) or 7(c) are applicable. For the reasons heretofore given in respect of employees in the repair shops, neither exemption applies.

Commingled Work.

There are numerous instances shown of the performance by a particular defendant, within a single workweek, of some activities which are exempt under either Section 7(c) or 13(a)(6), and other activities which are non-exempt. As a general rule, the engagement by defendants in non-exempt activities, in those workweeks where this is found to be the fact, was substantial; and even in those instances where such engagement was small in amount, it was regular and recurring.

As construed by the Supreme Court, the statute makes each workweek the standard to be considered in determining the applicability of overtime provisions. Overnight Motor Transportation Co. v. Missel, 316 U.S. 572, 579, 62 S.Ct. 1216, 86 L.Ed. 1682. It would be contrary to the Congressional intent to grant the exemption for a workweek in which the employee performed some activities which Congress intended to be non-exempt. The Administrator has long held the view that, where exempt and non-exempt activities are commingled in a single workweek, the entire week in non-exempt (Interpretative Bulletin No. 14).

This view has been uniformly sustained in an imposing array of decisions. Fleming v. Swift & Co., D.C.N.D.Ill., 41 F.Supp. 825, affirmed 7 Cir., 131 F.2d 249; Walling v. DeSoto Creamery & Produce Co., D.C.Minn., 51 F.Supp. 938; Shain v. Armour & Co., D.C.W.D.Ky., 50 F.Supp. 907; Walling v. Peacock Corporation, D.C.E.D. Wis., 58 F. Supp. 880; Weeks v. Postal Tel., 1 WH Cas. 1177; McComb v. Puerto Rico Tobacco Marketing Cooperative Ass'n., D.C.P.R. 80 F.Supp. 953, affirmed 1 Cir., 181 F.2d 697; Anderson v. Manhattan Lighterage Corporation, 2 Cir., 148 F.2d 971, certiorari denied 326 U.S. 722, 66 S.Ct. 27, 90 L.Ed. 428; Jordan v. Stark Bros. Nurseries & Orchards Co., D.C.W.D.Ark., 45 F.Supp. 769; Walling v. Bridgeman-Russell Co., 2 WH Cas. 785 (D.C.Minn.); Wabash Radio Corp. v. Walling, 6 Cir., 162 F.2d 391; McComb v. Del Valle, D.C.P.R., 80 F.Supp. 945; Sykes v. Lochmann, 156 Kan. 223, 132 P.2d 620; Gaskin v. Clell Coleman & Sons, 5 WH Repts. 581 (Ky.CC, Mercer Co., 1942); Loeb v. Ideal Packing Co., 7 WH Repts. 397 (Wisc.CC, Mill Co., 1944).

(16) In the case at bar, there are a few scattered instances where a defendant was assigned to perform exempt activities for virtually the entire week, but also performed a non-exempt activity for a small portion of time, sometimes as little as an hour or less. It is in accord with judicial authority to stand on the plain meaning of the statute, and to hold the exemption inapplicable, no matter how little time was devoted in the particular workweek to non-exempt work. Departure from the statute would create rather than obviate practical problems, including the problem of where and at what point to draw the line. The instances where such a small amount of non-exempt work was performed in a week which otherwise would be exempt, are few and scat-

tered. They do not present a consistent or recurring pattern, and it is not claimed by plaintiff that it cannot easily avoid such situations by assigning the non-exempt activity to some other worker who normally performs that type of work as a regular part of his duties.

Accordingly, where in any given work-week a defendant engaged in activities some of which were non-exempt, none of the exemptions pleaded by plaintiff applies to such work-weeks despite the fact that nearly all activities performed therein were exempt.

Retail Exemption.

Plaintiff urges that Section 13(a) (2) is applicable to some of its employees. This section exempts any employee engaged in a retail or service establishment the greater part of whose selling or servicing is in intrastate commerce. Upon the record of this case, it does not appear that any of the defendants fall within that provision; hence it is found that Section 13(a) (2) was inapplicable to all of the defendants.

Liquidated Damages.

In subsequent findings, determination is made that certain of the defendants are entitled to recover stated amounts as overtime compensation due and owing to them. Defendants seek liquidated damages in amounts equal to the unpaid overtime compensation found due to them.

The Act provides that any employer found liable for unpaid overtime wages, shall also be liable "in an additional equal amount as liquidated damages" Section 16(b). In 1947, Congress passed the Portal-to-Portal Act, which con-

tains provisions under which liability for liquidated damages, as well as unpaid overtime wages up to May 14, 1947, may be affected. Under Section 9 of that Act, no employer shall be subject to any liability, either for overtime wages or liquidated damages, if he pleads and proves that his failure to pay overtime was in good faith, in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation of any agency of the United States, or any administrative practice or enforcement policy of any such agency with respect to the class of employers to which he belonged; but this is expressly limited to claims based on an employer's failure to pay overtime prior to the date of enactment of the Portal-to-Portal Act, which was May 14, 1947.

Under Section 10, a second special defense is provided, which is more narrowly drawn with respect to the number or type of agencies of the United States on whose conduct an employer places reliance. Under this section, no employer subject to the Act shall be subject to liability for overtime compensation or liquidated damages, based on the employer's conduct on or after May 14, 1947, if he pleads and proves that his conduct was in good faith, in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, or any administrative practice or enforcement policy of the Administrator of the Wage and Hour Division of the Department of Labor.

A final special defense is created by Section 11, which gives the court discretion to award no liquidated damages, or award any amount thereof not to exceed the amount specified in Section 16(b) of the Act, if the employer shows to the satisfaction of the court that his act or omission giv-

ing rise to the action was in good faith, and that he had reasonable grounds for believing that it did not constitute a violation of the Act.

(17) Plaintiff, by its pleadings, raised all three of these special defenses. However, these defenses were abandoned at the trial; no evidence was offered by plaintiff in support of these defenses, and nothing was "proved" or shown to the satisfaction of the court" to support these pleas. In the absence of evidence to bring into operation any of the mentioned special defenses, there is no basis on which to deny full liquidated damages to those defendants who are entitled to recover, inasmuch as such is the requirement of Section 16(b) of the Act.

Costs and Attorney's Fees.

The defendants pray for costs and attorney's fees. The Act provides that the court "shall, in addition to any judgment awarded * * * allow a reasonable attorney's fee to be paid * * * and costs of the action". Section 16(b).

(18) The amount of attorney's fee awarded should bear proper relationship to the facts of the case, and should be reasonable in light of the quantum of service rendered, the difficulties presented by the problem and issues involved, and the extent of recovery achieved.

The court will award an attorney's fee which takes into account the foregoing factors as they relate to the facts of this case, the occurrence of two trials and one appeal, and the total recovery for all defendants, which, including liquidated damages, amounts to $6,729.02.

Costs of the suit will also be ordered paid to the defendants who prevail in this action.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Waialua Agricultural Company, Limited, Appellant, vs. Ciraco Maneja, et al., Appellees.	No. 13,114 OPINION May 5, 1954

Appeal from the United States District Court
for the District of Hawaii

Before HEALY, BONE, and FEE, Circuit Judges

JAMES ALGER FEE, Circuit Judge:

This case must be reversed for error in approach. Waialua initiated the procedure by petition for declaratory judgment. The trial court, misled by the nature of the cause and the attitudes of the parties, decided the wrong issue.

The status of Waialua was tried out. It was contended by Waialua that it was engaged in agriculture, and therefore all of its employees were exempt from application of the statute. The trial court, in its first declaration, which was reversed for lack of findings, and in its present declaration and judgment, took the converse position. It has held that Waialua, through corporate affiliations, interlocking directories and factor relationships, was a manu-

facturer of refined sugar on the mainland, and there engaged in interstate and foreign commerce.[1]

By agreement of all parties and the Department of Labor, the Court finds that all employees of Waialua except one group[2] "are engaged in commerce or in the production of goods for commerce." Therefore, it was concluded that every employee of Waialua on Oahu, Territory of Hawaii, was subject to the drastic provisions of the act for each work week in which he did not spend every employed hour in an activity such as planting, irrigating, cultivating, ratooning or cutting and loading cane.[3] In pursuit of the fallacy so induced, the Court refused to describe each employee who harvested the crop by reducing cane to raw sugar and molasses, an operation essential to its preservation, as an agricultural worker.[4]

Thus the trial court did not give effect to the language of the statute which excludes from its operation anyone

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[1]The trial court found that Waialua does not "directly engage in any sugar refining operation." 97 F.Supp. 198, 203.

[2]This group is composed of employees who perform the work of repairing and maintaining dwelling houses in the mill village. These employees the Court found, independently of agreement, were employed in the production of goods for commerce. 97 F.Supp. 198, 226-232.

[3]These activities are particularized by the trial court at 97 F. Supp. 198, 219, paragraph [3].

[4]The trial court, disregarding an express direction of this Court, allowed the processing exemption, which is beside the point. The activity was excluded by the terms of the Act. In its previous opinion, 178 F.2d 603, this Court stated: "Not only was it the desire to exempt processing as a part of the harvesting done by a farmer or on a farm, but also processing done by a third party. These provisions are not alternative or mutually exclusive, and should be liberally construed for the reasons given by this Court in McComb v. Hunt Foods, Inc., 9 Cir., 167 F.2d 905, 908." (page 609). The processing exemption, 29 U.S.C.A. § 207(c), is directed primarily toward that "processing done by a third party." See also Walling v. Peacock Corporation, 58 F.Supp. 880, 883; Redlands Foothill Groves v. Jacobs, 30 F.Supp. 995, 1006.

"employed in agriculture"[5] and defines "agriculture" to include "farming in all its branches and among other things * * * the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural and horticultural commodities * * * and any practices * * * performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."[6]

After a remand upon a previous appeal,[7] on motion of Waialua, the International Union was eliminated and its Secretary, Jack Hall, stricken from the defendants. The representative character of the original proceeding was also abandoned. The individual workers, most of whom were retainers and dependents of Waialua although union members, were permitted to file a so-called cross-complaint, praying for relief in sums of money, and this time several of these individual employees gave testimony as to the kind of work each did. None of these devices, adopted to meet criticism of this Court, changed the fundamental character of the proceeding. The individual employee cross-complainants still seem "pawns in this battle of the demi-gods." Waialua seems to act to pre-

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[5]29 U.S.C.A. § 213(a)(6). "* * * the raising and harvesting of sugar were specifically given consideration by Congress on account of the immense importance to the economy of this country as a whole." Waialua Agricultural Company, Limited v. Maneja, 9 Cir., 178 F.2d 603, 608, paragraph [6-8].

[6]29 U.S.C.A. § 203(f).

[7]Waialua Agricultural Company, Limited v. Maneja, 9 Cir., 178 F.2d 603, cert. den., 339 U.S. 920.

serve relations with the Union and a federal bureau, as a policy. Practically all facts are agreed and, as above noted, constitutional and jurisdictional conclusions as to coverage were accepted. Thereby, emphasis was placed upon the wrong problems.[8] This conjugation by consent removes the cause from the class of "cases and controversies" and is an abuse of declaratory judgment procedure. The only bitterly partisan litigant is an executive bureau not named in the record as a party. Notwithstanding a plain warning of this Court upon the last appeal that such evidence was impertinent to the whole question as to whether the individual employee was an "agricultural worker," the parties introduced at this trial and the Court adopted as a basis for decision two treatises. These were entitled, respectively, "Labor in the Territory of Hawaii, 1939"[9] and "The Economy of Hawaii in 1947,"[10] studies made under the supervision of a department of the government, which, as noted above, took an active part not only in the trial court, but on both appeals.

Thus a false issue was created. Instead of concern with the question of who was employed in agriculture, the attention of the Court was deflected to a consideration of

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[8]The suggestion of the trial court in one opinion that the exclusion of agriculture would free farmers from the "oppressive child labor" provisions of the Act need not be too much regarded. Such a problem does not exist. And we have come a long way from sound thinking in America if it be suggested that a farm boy should not work on a farm. Of course, the bureaucrats could take much better care of him.

[9]James H. Shoemaker, U.S. Bureau of Labor Statistics, United States Government Printing Office, 1940.

[10]Bulletin No. 926, United States Department of Labor, United States Government Printing Office, 1948.

membership of Waialua in a non-profit sugar refining and marketing cooperative called "California & Hawaiian Sugar Refining Corporation, Ltd.", of California, which was engaged in the manufacturing business of refining raw sugar, marketing the product, and transporting the refined sugar to the consumers.[11] But all the activities of the latter were carried on upon the mainland. No one of its employees is here involved. None of the workers of Waialua was employed by the cooperative.

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[11]A similar contention was made by the Administrator of the Wage and Hour Division, as a bitterly partisan litigant under the guise of amicus curiae in Miller Hatcheries, Inc. v. Boyer, 8 Cir., 131 F.2d 283, 285, where Judge Johnsen, in an illuminating opinion, held that employees of a commercial hatchery were excluded because "employed in agriculture." There the Administrator contended "that the hatching of baby chicks by a commercial hatchery is an industrialized and highly specialized activity which does not itself have any direct connection with 'farming operations'; that the economic function of such an urban establishment is completely disassociated from the agricultural activities," that "thus transposed from a farm to a commercial establishment it ceases to be a technical farming activity" and that "the attributes of farm labor which justify its exclusion * * * ought not to be regarded" as extending to a commercial operation.

This compares with the contentions of the Administrator here: "To accomplish its purpose of producing raw sugar, appellant plainly engages in many separate and distinct enterprises appropriate to that end, including manufacturing and transportation, as well as farming. This integration of business operations neither conceals the essential non-agricultural character of appellant's manufacturing functions nor submerges the fact that appellant, in operating a hybrid type of business, has assumed the functions of a manufacturer and a railroad company, as well as those of a farmer. * * * Just as the chain store cannot obtain the retail exemption for its central office and warehouse merely because the services of those units are restricted to exempt retail outlets, so here, appellant cannot achieve exemption for its separate manufacturing function and its railroad activities simply because it utilizes them only for the products of its farm."

If the pertinent question of employment in farming had been considered instead, then the language of the statute defining such employees would have been given effect.[12]

The decisions of this Court bear out the breadth of the exclusion of agricultural workers. Dofflemyer v. National Labor Relations Board, 9 Cir., 206 F.2d 813 (Judge Healy) shows that technical distinctions should not be used to circumscribe the words "farmer" and "farm" as used in the Act. The necessity for immediate processing of a farm product is of great force in emphasizing the scope of the agricultural exclusion, according to Judge Bone, writing for the majority in McComb v. Hunt Foods, 9 Cir., 167 F.2d 905, where the interpretations of three different district courts in widely separated agricultural areas of the mainland are followed. There the Court said:

> " 'The policy of protection to the growers of "perishable and seasonal fresh fruits" is of as much force as that of the protection of general industrial workers. The objective of a uniform rule for hours and wages in manufacturing should not be allowed to prevail over the paramount necessity of garnering and preserving fruits and grains when Congress equally recognized both in the Act. The hypertechnical reasoning concerning "exceptions" and "exemptions"

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[12]In an interesting case parallel to this in another food supplying industry, the Court of Appeals of the Third Circuit held, in an able opinion by Judge Maris, that all employees necessary to carrying on a fishery and fish processing activities were "exempt by the plain language of Section 13(a)(5) of the Act." McComb v. Consolidated Fisheries Co., 3 Cir., 174 F.2d 74, 78. It should be marked with red on the margin of this case that the Administrator was there contending that all employees of a farmer, including those engaged in first processing, were excluded by the language, but that the exemption to fish processors was much narrower.

has no place here. A direct expression of non-applicability constitutes neither.'

"This is but another way of saying that if the business operations claimed to be exempt are found to fall within the exempt classification, the statute is, as to them, a 'remedial' statute. We agree with the lower court that no formalistic characterization should be permitted in dealing with any of these clauses since the plain intention of the statute should be carried out." (page 906).

The trial court was thus in error in requiring Waialua to prove beyond peradventure the affirmative of the proposition that each worker was employed in agriculture and in activities by a farmer and on a farm. By an unwarrantedly strict construction, Waialua was required to establish exemptions beyond a reasonable doubt, as though it were negativing a jurisdictional proviso in an indictment.

Upon the former appeal, to which reference has been made, the Court questioned the aptness of the declaratory proceeding, but remanded because the findings were not sufficient to support any judgment. The findings before us are now meticulous and exact as to the hours and type of work performed by each worker defendant during each work week in question. However, the trial court failed to find many vital facts which the record, as we view it, bears out, and made many findings which are clearly erroneous. For these reasons alone, the cause must be reversed.

A vital finding contains the implication that sugar cane can be stored in Hawaii three or four days without spoil-

ing.[13] In fact, a delay of three or four hours is apparently deleterious, and for best results the cane, after cutting, should move continuously from field to crushing mill.[14] The Court concludes that no worker at the crushing mill is employed in agriculture but is exempt only insofar as he assists in first processing. If necessity for immediate treatment for preservation had been found, the Court would have been impelled to find an employee at the mill was engaged in "harvesting" an agricultural product. The Court found transportation of cane from fields to cars was farming, but carrying of cane on cars drawn by a locomotive from loading points to the mill was "railroading" and transportation in commerce. Again, the railroad and its crew performed no other kinds of transportation, and therefore what each did was "harvesting." The complete operation was vitally necessary to put the crop into a form in which it would not spoil and, as "raw sugar," could be transported to the mainland for manufacturing. Any activity of any employee which assisted in this operation, whether furnishing power to the mill or hauling cane from field to mill, fell within the express word "harvesting" used in the enactment. Such a finding was not made. Those which were made were erroneous.

Even if it could have been concluded that these activities were not "harvesting," they were nevertheless car-

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[13] 97 F.Supp. 198, 203.

[14] "Sugar cane is highly perishable * * * and starts to deteriorate immediately after harvesting. To avoid serious losses, it must be processed into sugar, syrup or molasses within a few hours after it has been burned or severed from the ground." Stipulation of Fact, Part I, § 4.

ried on by a "farmer."[15] Furthermore, such activities were performed "on a farm." On either of these independent grounds, workers so employed were excluded by the enactment.

But the Court failed to find that Waialua was a farmer.[16] The record and stipulations show conclusively that all activities of Waialua upon the island of Oahu were concerned with growing, cultivating and harvesting sugar cane. It should have been found that Waialua was a farmer, and all workers performing functions for it on the plantation were employees of a farmer. It should have been found that transportation of cane to the mill and the crushing and drying of the raw sugar therefrom were activities performed by a farmer as incidents to and in conjunction with farming operations, including harvesting, preparation for market and delivery to storage. Findings of fact which have contrary implications are clearly erroneous.

The trial court also found neither railroad nor crushing mill were "on a farm."[17] The admissions, maps and

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[15]Employees of a "farmer" who work in or out of a store, transporting, packing and selling plants in connection with a wholesale and retail outlet located in a city four miles from the "farm" are held to be employed in agriculture. Walling v. Rocklin, 8 Cir., 132 F.2d 3. "The raw products were at most being prepared for market in connection with the business of producing them." (page 6).

[16]The trial court held, contrary to the stipulations and evidence, that Waialua "assumed a variety of functions, including those of farmer, carrier, manufacturer, shipper, and operator of village communities." 97 F.Supp. 198, 218.

[17]The trial court apparently confines the meaning of the word "farm" to the fields upon which cane is actually grown, for it is pointedly said in the opinion, "Obviously cane is not grown on the right-of-way occupied by the fifty-six miles of permanent main line railroad track." 97 F.Supp. 198, 222. Cane probably does not grow on roads where ox teams hauled cane.

other exhibits indicate all the activities of employees of Waialua were carried on within the boundaries of a single parcel of land described as a "plantation."

The railroad and the mill[18] were located upon a plot of ground and appurtenances all of which were in exclusive possession of Waialua. Practically all the area was also in its "ownership,"[19] although some acreage was leased and one field was connected with the main body by a right of way for moving its agricultural equipment, supplies and sugar cane. By far the greater percentage of the ground in the area was devoted to raising and harvesting of sugar cane in a year round process as an integrated operation. This situation dictates that the locus in quo be found to be a "farm."[20]

If then the particular activity of an employee was neither "cultivation and tillage of the soil" or "the production, growing and harvesting" of this crop, he was

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[18]The trial court's opinion states that the mill was on the plantation. 97 F.Supp. 198, 204.

[19]Discussion of the peculiar land system of Hawaii is not necessary.

[20]National Labor Relations Board v. John W. Campbell, Inc., 5 Cir., 159 F2d 184, 187: "The argument that Respondent has 1,000 acres planted in tomatoes and grows, packs and markets many carloads in a season and, because of the very nature and size of its operation, should be held to be engaged in an industrial enterprise as distinguished from the pastoral pursuits of a farmer, will not do. The exemption was not restricted to the forty-acres-and-a-mule farmer. It is not measured by the magnitude of his planting nor in the prolificacy of his harvest. In Larson v. Ives Dairy Co., 5 Cir., 154 F.2d 701, 702, we said: 'Here, however, there is but a single enterprise, and that a dairy farm. * * * The size of the farm, of course, does not matter—it is still a dairy farm.' Here, also, the growing, harvesting, packing and selling are all a part of a single enterprise."

engaged in a practice performed "by a farmer or on a farm" under the conditions set up in the statute.[21]

Misled by the apparent wholehearted agreement as to the constitutional and jurisdictional conclusion regarding preparation of goods for commerce, the trial court inferred that a worker engaged in any operation or practice which was considered not farming by the strictest classification was covered by the enactment. We emphasize that, if it had been found that reduction of cane to raw sugar or molasses almost immediately after cutting is an imperative necessity, the palpable falsity of such sequela would have been patent. The integrated operation required making of repairs on the crushing mill while shut down for three months for that purpose, the repair and overhaul of the various machines used in cultivating, cutting and hauling, and the furnishing of power for the mill, including the hauling and burning of bagasse[22] in the furnace thereof.

In order to show how obviously it was on the wrong path, it may be observed the trial court concluded em-

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[21]"Congress, as well as this Court, has recognized that the packing and preparing of agricultural products for the market is a necessary incident to any agricultural operation, for no farmer, dependent upon that which he produces to sustain his operations, could long exist if he could not market that which he produces, and so long as the operation of washing, packing, and preparing for market by the employees of a farmer is on that only which he has produced on his farm, it is a necessary incident to farming and is agricultural labor. The wheat farmer must thresh his wheat; *the cane grower must cut his cane and make its juice into syrup;* the cotton grower must gin and bale his cotton; the citrus grower must pick and pack his oranges; and the tomato grower must do likewise. So long as these undertakings are in the preparation and packing by him for market of that which he has grown on his farm, the labor necessary thereto is agricultural labor." National Labor Relations Board v. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 187 (emphasis added).

[22]The end residue of the cane after abstraction of the juices.

ployees assisting in repairs and maintenance of houses, the operation of services and facilities of villages on the plantation, where some of these agricultural workers lived, including the street sweeper and those who picked up wood for cook fires, were engaged in the preparation of goods for commerce. In this conclusion, which even the Department of Labor does not attempt to defend in its current argument, the trial court betrays emotional aversion for the semi-feudal relationships which still exist in a dependency where the perquisite system abolished by Waialua under pressure still exists[23]. The fact that some of the retainers have lived in these houses of the overlord for life or for more than forty-five years[24] is not good reason to apply the Fair Labor Standards Act, even if this Court also disapproves of the condition.

The furnishing of housing and facilities for a purely agricultural community is local in its nature.[25] Perversion of concepts and language is essential to transmute irrigation of a growing crop, harvesting by performing proc-

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[23]The District Court describes the perquisite system at 97 F. Supp. 198, 214. By a collective bargaining agreement effective November, 1946, this system was abolished and the value of perquisites previously allowed was converted into cash wages.

[24]See the tabulation prepared by the trial court, 97 F.Supp. 198, 215.

[25]In a case where the employer was engaged in manufacturing, it was said, "* * * the plaintiffs were not covered by the Act while engaged exclusively in 'the construction, maintenance and repair of the residences in the mill village owned by defendant and occupied by its employees'; or, to state the matter differently, while the plaintiffs were so employed they were not engaged in the production of goods for commerce as that term has been defined." Morris v. Beaumont Manufacturing Co., 84 F.Supp. 909, 910-911. Soomer v. Durham, 93 F.Supp. 526, is an interesting case wherein building and repair of houses by employees of a coal mining company engaged in the production of goods for interstate commerce under the Fair Labor Standards Act is discussed.

esses immediately necessary for crop preservation, or furnishing essential housing to farm workers, into the production of goods for commerce. Mere rationalization will not metamorphize the practice of furnishing housing to workers so engaged into manufacturing. Such conveniences are traditionally furnished in the several states in larger operations of farms, ranches, orchards and plantations. In any event, here the furnishing of quarters for such of its workers who desired to live on the plantation on ground owned by Waialua was a convenient adjunct of farming.

We are forbidden by statute, custom and rule from making new findings of fact, even where we believe these are demanded by the record. This prohibition does not vanish where, as here, comprehensive agreements of facts are made in writing and much of the proof is documentary while the testimony does not bear on the contested issues. Writings and agreements of the parties are notoriously meretricious in dealing with jurisdictional or constitutional questions. Where some findings are clearly erroneous, our duty is to reverse.

This brings us to a consideration of a constitutional question of some magnitude. Should a statute of general application throughout all the states be given special construction in order to cure economic abuses indigenous to Hawaii? Congress has almost autocratic power over a territory. The commercial status and labor problems of Hawaii might well be settled by specific statute.[26] But the

[26]The thesis that the peculiar problems of a territory should not be permitted to affect construction of an Act designed to protect farmers in the states is well illustrated by the progress of affairs

same regulation of agriculture in the states on the mainland would be unconstitutional. In each of the two opin-

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in Puerto Rico, where the situation is even more bizarre than that in Hawaii.

Congress has approached the problem of labor in possessions pragmatically by means of extended investigations and reports. As a result of a realistic awareness of the ideochromatic characteristics of each dependency, the Sugar Act of 1937, Act, September 1, 1937, c. 898, 59 Stat. 903 ff., was enacted, which differentiated explicitly between sugar produced on the mainland and that produced in the dependencies, territories and protectorates, and that produced in the latter between the separate areas. The Court of Appeals for the First Circuit necessarily reconciled the provisions of the Fair Labor Standards Act with the clauses of the Sugar Act applicable to Puerto Rico, Vives v. Serralles, 145 F.2d 552. Legislatively, the requirement that there be special enactments relating to Puerto Rico has been recognized by the passage of the Act of August 8, 1947, c. 519, Title II, § 202, 61 Stat. 924, as amended September 1, 1951, c. 379, § 1, 65 Stat. 318. The enactment by Congress of legislation amendatory of the Fair Labor Standards Act, relating particularly to Puerto Rico and the Virgin Islands, Act of October 26, 1949, c. 736, § 8, 63 Stat. 915, indicates conformity to the strict letter of the former statute might unhinge the economy of these islands.

When the Act was new, the Wage and Hour Division interpreted the harvesting of the raw sugar from cane as "preparation for market" if done by a farmer. Subsequently, because of a series of decisions relating exclusively to Puerto Rico, the Administrator said the Wage and Hour Division had made a mistake in this interpretation, and that harvesting resulting in molasses and raw sugar was not excluded by the Act. This opinion was advanced with no consideration of the special conditions and legislation relating to the territory and with the intent that the construction be applied to the statute within the several states to which the special provisions of the enactments did not apply.

As noted previously (178 F.2d 603, 611), the Puerto Rican cases are generally distinguishable in that they are not related to activities performed by a farmer or on a farm, but are either cooperative enterprises or are done by some outside agency. On the other hand, certain judicial interpretations, if viewed as interpretations of the general act binding on farmers on the mainland, are excrescences as foreign as gargoyles on a classic temple. McComb v. Puerto Rico Tobacco Marketing Co-op Assn., 80 F.Supp. 953, affirmed, 1 Cir., 181 F.2d 697; McComb v. Del Valle, 80 F.Supp. 945; McComb v. Casa Baldrich, Inc., 80 F.Supp. 869; McComb v. Super-A Fertilizer Works, 1 Cir., 165 F.2d 824.

ions of this case,[27] the trial court reviewed the whole economic structure of the Territory of Hawaii, the factor system of marketing native products, the vestiges of feudal incidents, the peculiar land system and the dependency of the islands upon the mainland. To crown all, the theory of appellees is that Congress, in passing the Fair Labor Standards Act, did not have in contemplation such an agricultural giant[28] as this farming corporation in a sea island of the Pacific, and therefore the Court refused to exclude its workers employed in agriculture. This premise is obviously based upon the idea that the language of the Act clearly excludes employees of such a corporation, but, if Congress had contemplated Waialua, the law would have placed such workers under the wages and hours provisions. But, disregarding all logical conclusions from its premise, the trial court applied the drastic overtime provisions in all their rigor to the peculiar corporation which Congress had not considered.

If we were drafting a specific law to deal with labor conditions of Hawaii, emotional sympathy for some of the attitudes of the trial court might be given effect. But we

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[27]Found at 77 F.Supp. 480 and 97 F.Supp. 198.

[28]The Supreme Court expressly recognizes that largeness is not the test. In Addition v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 614-615, the Court adopted with approval and applied in the solution of a like problem an expression uttered in a debate in the Senate. "Senator Schwellenbach frankly stated that the largest apple packing plant in the world would be exempt if the 'work done in that plant is as described in the amendment'." The Court summarized its position as follows: "Where Congress wanted to make the exemption depend on size, as it did in two or three instances not here relevant, it did so by appropriate language. Congress referred to quantity when it desired to legislate on the basis of quantity."

are construing a general statute binding in all the states as well as this territory.

Everyone who remembers the history of this legislation knows that the mainland farmers were alert when these bills were in Congress. The Congressional Record indicates how changes in the language were required by them and that the legislators debated and explained the effect of each provision.[29] The statute which was written seems plainly to protect all possible phases of agricultural pursuits from regulation.[30] But the drive of a motivated bureau, which apparently considers the interests of labor utterly inimical to any protection of the farmer, has distorted the language used by some of the courts.

Do some opinions mean that the plain expressions of Congress in the statute excluding those employed in agricultural pursuits are to be overridden by some higher policy? The expressions of Congress were dictated not only by the pressure of the farmers, but by the realization that the federal constitution left local concerns such as agriculture wholly in the governance of the several states.

One of these perversions which might be allowable in a statute applicable to a territory alone is the attempt to

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[29]See 81 Congressional Record 7648 et seq., 83 Congressional Record 7393, 9162-9163, 9253 et seq., H.R. No. 1452, 75th Congress, 1st Session, pp. 4-5, 11; H.R. No. 2182, 75th Congress, 3rd Session, p. 2.

[30]The agricultural exclusion "is drawn in far reaching language which shows the intent of Congress to make the term 'agriculture' cover much more than what might be called ordinary farming activity and that is what now controls." Damutz v. William Pinchbeck Inc., 2 Cir., 158 F.2d 882, 883.

make the farmer prove affirmatively that the particular activity falls within the statutory exclusion. The use of the word "exemption" in a heading of the enactment has been seized upon by the bureau and followed by the language of some of the courts.[31]

But agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in a constitutional sense.[32] Most agricultural products eventually get into interstate transportation. But growing and harvesting of such products is not preparation of goods for commerce. The statute sets this out in immutable terms by expressly stating that preparation of goods for market by a farmer or on a farm is excluded.

So we must go further and direct the proceeding be dismissed for abuse of discretion in entertaining a petition for declaratory judgment here and attempting to set-

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[31]This Court, in the former opinion, 178 F.2d 603, 609, indicated that the workers in agriculture were completely excluded from the provisions of this Act. The language of the statute makes it abundantly clear that, since agriculture is a local enterprise and cannot without distortion be called commerce or preparation of goods for commerce, the manifest intention was to exclude workers on farms and those employed in agriculture from the sweep of the Act. The use of the words "exempt" and "exemptions" in the regulations and by the courts is justified by the text. But the words of the statute, "shall not apply with respect to", indicate a policy of exclusion of such employee no matter what the business of the master. With regard to agriculture, this policy of exclusion was as powerful as the policy which dictated the general provisions controlling employees in industrial pursuits. There is no ground to invoke the theory of technical, narrow construction of the Act to cover this basic food supplying industry. Walling v. California Conserving Co., 74 F.Supp. 182, affirmed, 9 Cir., 167 F.2d 905, cert. den., 335 U.S. 845.

[32]Federal regulation of agriculture invades the reserved rights of the states. United States v. Butler, 297 U.S. 1, 68. But cf., Wickard v. Filburn 317 U.S. 111.

tle a question of jurisdictional and constitutional construction therein.[33]

It is true the statute was not passed with the peculiar economic situation of Hawaii in mind. Probably no specific contemplation of an organization such as Waialua was in the foreground. But no one can deny that the positive clauses of the Act were to assure the farmer in the several states of the continuance of his untrammeled way of life. It was the intention that no bureau should dictate the hours of his work[34]—traditionally from sun to sun—in the vitally essential task of feeding this nation and foreign peoples to whom aid has been extended in the form of foodstuffs. It has been a platitude of American politics that the farmer is required to pay higher prices for those things which he buys than he can obtain for the products which he raises and sells. It was in the effort to prevent the specialization of labor employed in agriculture, where every man must be able to do all of the multitudinous tasks, that these sections were adopted. It was to the end that the farmer could use in the operations on the farms unskilled and migrant labor, so that his economic burden might in one respect be lessened. These provisions of the statute were included to prevent placing innumerable re-

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[33] "This Court is without power to give advisory opinions. It will not decide constitutional issues which are hypothetical, or in advance of the necessity for deciding them, * * *." Ashburn Hospital v. Cass County, 326 U.S. 207, 213.

[34] Speaking of the Fair Labor Standards Act and other acts, the Court of Appeals for the Fifth Circuit states: "* * * that exemption seems to have been a part of a general legislative pattern of those times which clearly indicates that the purpose of Congress was to relieve distressed farmers from burdens which it well knew they were not equipped to carry." National Labor Relations Board v. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 187.

strictions and crushing burdens by bureaucratic supervision upon the American farms of the mainland.

There has been an attempt to use the Farmers Reservoir case as a precedent here.[35] The gist of the decision there was that release of water from a headgate by the field men of the reservoir company was not farming, (as actual application of the water to a growing crop would have been); it was not an act done by a farmer in connection with farming and it was not done on a farm. The decision on these specific grounds must be followed. Besides, there is no reason to question its logical validity on the basis above set out. It is true that the majority unfortunately accepted the acquiescence of the parties as establishing the constitutional and jurisdictional factor that the employees of a local irrigation company were engaged in a "process or occupation necessary for the production of goods for commerce." Thereby the long-standing principle of decision that a constitutional and jurisdictional issue will not be debated or considered unless actively raised by the parties was abandoned. Nor can we accept as an explanation that rationalization leads to quaint results.[36]

However that may be, in this case in a declaratory judgment proceeding in a territory, all parties and the Department of Labor acquiesce in the proposition that farming itself is production of goods for commerce. We

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[35]Farmer's Reservoir and Irrigation Co. v. McComb, 337 U.S. 755.

[36]"Both in the employments which the Fair Labor Standards Act covers and in the exemptions which it makes, Congress has cast upon the courts the duty of making distinctions that often are bound to be so nice as to appear arbitrary in relation to each other." Id. at 770 (concurring opinion).

repudiate consent of the parties as a basis for decision. Upon this fallacious theory, the trial court arrived at its findings and conclusions here accused. We hold that a farming operation such as growing the crop or harvesting is not commerce. By no dialectics can it be shown that irrigation, cultivation, plowing of the ground, pruning of the trees or any of the processes before harvest, whether performed by a farmer or on a farm, are other than purely local concerns relating to the production of a crop. Common sense forbids it. Jurisdiction to regulate farming on the ground that the products thereof may eventually go into commerce cannot be conferred by consent of the parties even in a particular case. By definition, any process essential to the growing, production or harvesting of crops is neither interstate or foreign commerce nor preparation of goods therefor, nor yet again a process or occupation necessary for the production of goods for commerce. Farming in the several states cannot be regulated as commerce even if it does constitute preparation of farm products for market. To hold otherwise would violate the express exclusionary language of the agricultural clauses of the statute and the public policy of cheap production of foodstuffs above noted.

The public welfare requires that this statute be not given a local interpretation to fit the needs of any territory, and that such special interpretations be not applied to agriculture throughout the several states.[37] The language

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[37]This warning was expressed in our former opinion, 178 F.2d 603, 613: "The danger is that, by agreeing to this course of conduct, a precedent might be established for the settlement of problems on the mainland which does not have the peculiar problems of Hawaii."

of the exclusion interprets a constitutional guarantee. It is a charter for the mainland farmer. So far as possible, in raising food for our widespread peoples, the farmer should be exempt from higher cost of labor. He should be able to plow, cultivate, irrigate, seed and harvest his crop without paying tribute. These processes, essential to all, should not be made to cost more.[38] The farmer in California should be able to run the heads of wheat through a thresher or combined harvester and shell out the grain, clean it, test it for protein content and store it. He should be able to transport it on the farm to the thresher or to storage or market, whether by his own railroad or by trucks or by airplane. The stock raiser in Idaho should be able to use all forms of transportation carrying calves or other stock to spring pasture or feeding grounds. The stock rancher should be able to use his vaqueros to repair barns, fences, corrals and even bunkhouses, where his employees sleep, without becoming a master carpenter. The raiser of peas should be able to make repairs and changes in his tractors, viners and mowers by his own employees without becoming a master mechanic. He should be able to transport the fresh peas many leagues from his land to the canner for essential immediate processing by his trucks driven by farm hands without becoming a trucker.

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[38] "It does not take a long memory to recall that in the midst of the depression of 1935, and for a time before and since, the farmer was the object of the deepest solicitude by Congress. It furnished abundant evidence that it believed that no class of citizens of the country was in greater need of Congressional aid than the farmer." National Labor Relations Board v. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 186.

The sheepman can have a worker employed by him run the system of gas or home-generated electricity which lights up innumerable farm buildings and feed the chickens he sells without becoming subject to the higher costs under the industrial provisions of this law. The orchardist of Washington should be able on his own land to pare and core the apples, transport the meat thereof to market, press out cider from the corings and peelings in a steam driven mill on his own land, and apply the residual pomace as dressing to his land without becoming a manufacturer.[39] The operations described in processing raw sugar from cane in Louisiana are in the same class.[40]

The authorities adverse to the maintenance of this declaratory proceeding are set out in the previous opinion.[41]

The territorial institutions of Hawaii had provided the protection for these workers almost identical with that

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[39]The suggestion that this argument permits the farmer to carry on extraneous manufacturing of such articles as automobiles on a farm is vacuous.

[40]As in the case of Miller Hatcheries, Inc. v. Boyer, 8 Cir., 131 F.2d 283, 286, "We are dealing with a situation where there has been 'a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion; of making the parts work efficiently and smoothly while they are yet untried and new'."

The Wage and Hour Division, on August 21, 1939, interpreting the Act when it was new, said:

"Section 13(a)(6) renders the wage and hour provisions of the Act *inapplicable* to employees employed in 'agriculture' * * *

"(b) The term 'preparation for market' must be treated differently with respect to various commodities. The following activities among others, *when performed by a farmer*, seem to be included within the term: * * *

"4. *Sugar—Manufacturing raw sugar, cane or maple syrup and molasses.*" Interpretive Bulletin No. 14. (Emphasis added.)

[41]178 F.2d 603, 613-614, notes 16-28.

which is the subject of this proceeding.[42] It is agreed by the parties that this Act requires Waialua to pay and it does pay as much or more than the minima of wages required for hour by the federal law. Perhaps, if local conditions compel, the territorial legislature will require the same work week in farming as is exacted by the Fair Labor Standards Act, but without federal bureaucratic control, which would necessarily be renounced if statehood were attained.[43]

Each of these employees had an adequate remedy by action at law if any thought he was aggrieved.[44] The matter could have been tried on the facts relating to his employment without the misleading background.

The cause is reversed for proceedings in accordance with this opinion.[45]

(Endorsed:) Opinion. Filed May 5, 1954.

Paul P. O'Brien, Clerk.

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[42]During each workweek involved herein, Waialua's employees received wages in excess of the Act's requirements. They received overtime pay for hours worked in excess of 48 hours a week. Thus defendant employees are seeking a maximum of 8 hours overtime pay for any of these workweeks.

[43]Perhaps for this reason Congress has never passed special provisions of this law applicable only to Hawaii, as it did for the Virgin Islands and Puerto Rico. See Note 27, supra.

[44]29 U.S.C.A. § 216(b).

[45]Arguments advanced by appellees and amicus curiae which are rendered immaterial because of the Court's decision are: (a) that the processing exemption, 29 U.S.C.A. § 207(c), applies only to the "place" in which processing is carried on and only during such time as processing is actually taking place; (b) that any employee who engages in a non-exempt activity for any portion of a workweek is covered by the Act during such workweek.

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United States Court of Appeals
For the Ninth Circuit

No. 13,114

Waialua Agricultural Company, Limited, a corporation,	Appellant,
vs.	
Ciraco Maneja, et al.,	Appellees.

JUDGMENT

Appeal from the United States District Court for the District of Hawaii.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Hawaii, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is reversed for proceedings in accordance with the opinion of this court, without costs to any party in this court.

(Endorsed) Judgment

Filed and Entered May 5, 1954.

Paul P. O'Brien, Clerk

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(Endorsed) Filed Jun 24 1954
Paul P. O'Brien,
Clerk

In the United States Court of Appeals
For the Ninth Circuit

No. 13,114

Waialua Agricultural Company, Limited,
Appellant,

vs.

Ciraco Maneja, et al.,
Appellees.

On Appeal from the District Court of the
United States for the District
of Hawaii

Upon Petition for Rehearing

Before: Healy, Bone and Fee, Circuit Judges

James Alger Fee, Circuit Judge:

The opinion of the Court needs no clarification. The cause was reversed, the final orders set aside and the cause remanded with directions to dismiss Waialua's declaratory petition. The Court construes what is called the cross-complaint as a petition also for declaratory relief. This is left undismissed by this Court. If the appellees believe this to be a counterclaim at law, they may take further proceedings as suggested in the latest opinion of this Court. The parties and the Trial Court, however, should be mindful of the fact that this Court has held that the entire cause was tainted by apparent collusion between the parties in the attempt to obtain an advisory

opinion upon constitutional questions. The considerations of expense in futile proceedings are, of course, the concern of the parties

Rehearing denied.

William Healy
Homer T. Bone
James Alger Fee
Circuit Judges

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1954

Nos. 357 and 358

CIRACO MANEJA, et al.,
Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Respondent.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Petitioner,

vs.

CIRACO MANEJA, et al.,
Respondents.

BRIEF FOR PETITIONERS, CIRACO MANEJA, ET AL.

OPINIONS BELOW

The opinion of the District Court for the District of Hawaii is reported at 97 F.Supp. 198. The opinion of the Court of Appeals for the Ninth Circuit, reversing

STATUTES INVOLVED.

Excerpts from the Fair Labor Standards Act of 1938.

"§ 3. *Definitions*

"As used in this Act

* * * * * * *

"(b) 'Commerce' means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

* * * * * * *

"(f) 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

* * * * * * *

"(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

* * * * * * *"

the judgment of the District Court and denying a petition for rehearing is reported at 216 F.2d 466. Both these opinions are printed in the Appendix to the Petition for Certiorari and in Volume III of the Transcript of Record.[1]

JURISDICTION.

The judgment of the Court of Appeals was entered on May 5, 1954. A petition for rehearing was not filed by petitioners Maneja, *et al.* A petition for rehearing was filed by Waialua Agricultural Company, Limited, petitioner in No. 358, on June 2, 1954, and was denied with a brief opinion on June 24, 1954. On July 13, 1954, Mr. Justice Black entered an order extending the time for filing petition for certiorari in No. 357 to September 22, 1954. The petitions were each filed on September 20. The writs were granted on November 8, 1954, at which time the cases were consolidated and the Solicitor General was invited to participate in oral argument on behalf of the Secretary of Labor, as *amicus curiae*. The jurisdiction of this Court is invoked under 28 USC 1254(1).

STATUTES INVOLVED.

This case involves, *inter alia*, the following provisions of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 USC 201, *et seq.*):

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[1] Prior opinions of the courts below dealing with this case are reported at 77 F.Supp. 480 and 178 F.2d 607.

"7. *Maximum hours*

"(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce——

* * * * * * *

"(3) for a workweek longer than forty hours * * * unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

* * * * * * *

"(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged;

* * * * * * *"

"§ 13. *Exemptions*

"(a) The provisions of sections 6 and 7 shall not apply with respect to * * * (6) any employee employed in agriculture;

* * * * * * *"

"§ 16. *Penalties; civil and criminal liability*

* * * * * * *

"§3. *Definitions.*

"As used in this Act

. . .

"(b) 'Commerce' means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

. . .

"(f) 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

. . .

"(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

. . .

"§7. *Maximum hours.*

"(a) No employer shall, except as otherwise provided in this section, employ any of his employees

"(b) Any employer who violates the provisions of section 6 or section 7 shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1954

Nos. 357 and 358

CIRACO MANEJA, et al.,
Petitioners,

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WAIALUA AGRICULTURAL COMPANY, LIMITED,
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vs.

CIRACO MANEJA, et al.,
Respondents.

BRIEF FOR PETITIONERS, CIRACO MANEJA, ET AL.

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a counterclaim under Section 16(b) of the Act to recover for themselves and "others similarly situated" unpaid overtime compensation, liquidated damages, costs and attorneys' fees. By stipulation and order the original trial was limited to the issues raised by the complaint and answer, and the trial of the issues raised by the counterclaim and the answer thereto was deferred. The issues thus raised by the initial pleadings concerned the scope of the agriculture exemption contained in Section 13(a)(6) of the Act and of the sugar processing exemption contained in Section 7(c).

After the trial the District Court held that with certain exceptions the overtime pay provisions of the Act applied to the defendant employees. (77 F.Supp. 480.) The Court of Appeals questioned the appropriateness of an action in declaratory relief or of a representative or class suit; held the findings were inadequate as to the precise activities of the individual employees and their connection if any with interstate commerce and as to the exact hours and workweeks involved; and remanded the cause for further proceedings. (178 F.2d 603.) The company's petition for writ of certiorari was denied by this Court. (339 U.S. 920.)

In conformity with the decision of the Court of Appeals, the pleadings thereafter were amended to eliminate the representative or class action aspects of the case and the union and its official were dismissed as parties defendant. The number of employee defendants actually involved was reduced to forty-two and the period in controversy was specifically limited to the time between

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November 20, 1946 and September 14, 1947. On the second trial the issues raised by the counterclaim, as well as those raised by the complaint, were tried. The employees thus sought specific money judgments for unpaid compensation for work in excess of 40 hours per week. The company sought to avoid the statutory provisions for overtime pay, claiming that it was exempt from these obligations by virtue of Sections 13(a)(6) and 7(c) of the Act.

The record made at the second trial consisted of the testimony of twenty-two of the employees involved, the testimony of Waialua's general manager, numerous exhibits, and a comprehensive stipulation of undisputed facts. This stipulation set forth in great detail the various and varied operations of the company and the tasks performed by each employee in connection therewith, hour by hour, and week by week during the period involved. The twenty-two employees testified concerning the work performed by each of them individually and personally in the vast enterprise conducted by the company, and the general manager testified as to the departmentalized nature of the business and generally substantiated the stipulation. Thereafter the parties briefed and argued their opposing interpretations of the statutory provisions involved.

Detailed findings of fact were made by the District Court with respect to all of the issues presented. (R. 190-304; see 97 F.Supp. at 201-218.) As contrasted with its criticism of the findings made at the first trial, the Court of Appeals described the findings now before this Court in this way:

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> "The findings before us are now meticulous and exact as to the hours and type of work performed by each worker defendant during each work week in question." (216 F.2d at 471.)

These findings contain, as to each employee in each of the workweeks in controversy during the period of time covered by the litigation, a detailed description of the work performed by the employee, the number of hours worked by him, his regular hourly rate of pay, whether he had received overtime compensation for hours of work in excess of 40, whether he was exempt under either Section 13(a)(6) or Section 7(c), and the amount of unpaid overtime compensation, if any, which the company owed him.[4]

The "meticulous and exact" findings of the District Court show that:

Waialua operates a sugar plantation on the island of Oahu in the Territory of Hawaii, engaged in the growing, cultivating, and harvesting of sugar cane; it operates a mill at which it processes the sugar cane into raw sugar and molasses, at which it bags the raw sugar, and from which it loads and ships the raw sugar to the refinery in the United States. From the mill it also loads and ships molasses in bulk to the United States.

Waialua is the third largest producer of raw sugar in Hawaii, and in the year prior to the suit produced over 56,000 tons of raw sugar.[5] At the time of trial

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[4]Appended hereto are detailed excerpts from the trial court's findings as to each employee.

[5]The Territory itself produces between 10% and 13% of the world's sugar supply.

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the company was producing sugar cane on 9,663 acres of land, all owned by it. There were 1,144 persons in its employ on September 1, 1946.

To transport the sugar cane from the fields to the plant where it is manufactured into raw sugar, Waialua uses its own modern railroad system consisting of 56 miles of railroad track, 10 locomotives, and 712 cane cars. A complete roundhouse is maintained for servicing this equipment. The investment in this railroad system amounts to nearly $800,000. The men employed on this railroad system are typical railroad employees—engineers, repairmen and section hands.

The manufacturing plant and mill is highly mechanized, consisting of a cane cleaning plant, a cane crushing room, a boiling room, and a bagging room. This plant is located in a yard area separate and distinct from the growing fields. It is an industrial type plant with efficient modern machinery adapted for the purpose of converting sugar cane into raw sugar and molasses. During the approximately three months of each year when the plant is closed down for repairs to machinery, no processing operations are conducted.

Waialua also maintains complete and physically separate warehouses and shops for the repair and overhaul of field equipment, mill equipment, and equipment used in servicing Waialua Village, the town maintained by respondent to house its employees.[6] The shops include

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[6]At the time of trial, the village consisted of 820 houses, all owned by respondent, together with business establishments necessary to serve the community. On the basis of a census which was completed June 30, 1946, the 820 houses on the plantation

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who is engaged in commerce or in the production of goods for commerce—

. . .

"(3) for a workweek longer than forty hours . . . unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

. . .

"(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged;

. . .

"§13. *Exemptions.*

"(a) The provisions of sections 6 and 7 shall not apply with respect to . . . (6) any employee employed in agriculture; . . .

. . .

"§16. *Penalties; civil and criminal liability.*

. . .

"(b) Any employer who violates the provisions of section 6 or section 7 shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability as may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such em-

ployee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The Court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

QUESTIONS PRESENTED.

Petitioner Ciraco Maneja and the forty-one other petitioners are employees of Waialua Agricultural Company, Limited, a corporation. Waialua is located in the Hawaiian Islands where it engages in the large scale production of sugar cane. This it manufactures into raw sugar which is then exported to the mainland. At Crockett, California, the sugar is refined in a plant which Waialua and thirty other Hawaiian sugar producing companies own through the medium of a cooperative association. Thereafter the Association markets the sugar and distributes the profits of the entire operation to the member companies substantially in proportion to the amounts of raw sugar each delivers to the cooperative.

Prior to the institution of this suit, there had been other litigation respecting the application of the Fair Labor Standards Act to the company's employees. The earlier case was settled by a stipulated judgment in favor of the employees entered before trial. (*Takenaka v. Waialua* [D.C. Haw. No. 640].) The controversy continued, however, and in 1947 the company, invoking the jurisdiction of the District Court because the proceeding arose

under an Act of Congress regulating commerce (see 62 Stat. 931; 28 USC 1337), brought suit for a declaratory judgment (see 62 Stat. 964, as amended by 63 Stat. 105; 28 USC 2201) to resolve and terminate the controversy. The employees counterclaimed under Section 16(b) of the Fair Labor Standards Act, seeking compensation for unpaid overtime work claimed due them under the provisions of the Act.

This case was tried twice, the first trial resulting in a remand to the District Court. Upon the last trial, the District Court entered judgment for the employees on the counterclaim. On appeal, the Court of Appeals reversed.

The employees petitioned for certiorari. The question presented by the employees' petition (No. 357) is whether the Court of Appeals erred in reversing the judgment rendered on the counterclaim. Broadly stated, it is whether and to what extent the company is exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938. Directly embraced in this question is the correctness of the holding of the Court of Appeals that none of the employees was engaged in commerce or in the production of goods for commerce, and of its subsidiary ruling that the agriculture exemption deprived each employee of the statutory right to overtime compensation. Also involved is the correctness of the District Court's ruling that the processing exemption applied only to the place where and at the time during which processing was actually taking place, and its ruling that employees who performed some exempt and some non-

exempt work in a given workweek were covered by the Act for that week.[2]

Waialua also petitioned for certiorari. The questions presented by Waialua's petition (No. 358) are whether the Court of Appeals erred in directing a dismissal of the declaratory judgment suit on the ground that the parties were in "apparent collusion", and whether its judgment should be reversed "with directions to review on the merits the issues of statutory construction which were presented by the parties in the record and were determined by the judgment of the District Court."[3]

STATEMENT.

The suit was begun in 1947 by the company for a judgment declaring its obligations under the provisions of the Act. The jurisdiction of the District Court was invoked because the question arose under a law relating to commerce, to-wit, the Fair Labor Standards Act. The original complaint named as defendants certain employees of the company (among them petitioners Maneja, *et al.*), "others similarly situated", the labor union which was the collective bargaining representative of those employees, and one of its officials. The employees, including petitioners Maneja, *et al.*, answered and also filed

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[2]Because the Court of Appeals disposed of the case on other grounds, it did not pass upon these latter two rulings of the District Court. The employees having reserved the points in their petition (pp. 3-4, n. 3) here urge that the District Court's rulings in these respects were correct.

[3]Petition for writ of certiorari in No. 358, p. 3.

operation of a railroad system and a sugar mill—are not agriculture (*Bowie v. Gonzalez*, 117 F.2d 11 [CA 1]), and the mere fact of unitary ownership does not make them so (*Calaf v. Gonzalez*, 127 F.2d 934 [CA 1]; *Vives v. Serralles*, 145 F.2d 552 [CA 1]). The employees do, of course, perform functions which may be "necessary" to agriculture. But like many activities without which agricultural production would not be possible, those functions are not themselves agriculture since they are separate and independent productive operations, organized as such by Waialua. (*Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755.) The mechanics, railroaders and mill workers require different skills and trainings from the field workers, and employees who possess and utilize such skills are not farm hands. The existence of the processing exemption in Section 7(c) of the Act clearly indicates that mill work was not intended to be included within the agriculture exemption of Section 13(a)(6). (*Bowie v. Gonzalez*, 117 F.2d 11 [CA 1].)

3. The carpenters, plumbers, electricians, railroad men and other employees here involved are not engaged in processing. The processing exemption does not apply to those employees or to the employees who repair the mill during the off-season, or who generate steam and electric power. These activities are not the processing of sugar. Certainly, carpentry, welding or railroading are not the processing of sugar and in any case do not occur at the "place" where sugar is processed. (Administrator's Interpretative Bulletin No. 14 [1941 W.H.Man. 320, 323-324]; *Fleming v. Swift & Co.*, 41 F.Supp. 825 [N.D. Ill.], aff'd 131 F.2d 249 [CA 7].) Certainly the production

of power is not the processing of sugar (*Shain v. Armour & Co.*, 50 F.Supp. 907 [W.D. Ky.]; *Walling v. Bridgeman-Russell Co.*, 2 W.H. Cas. 785 [D. Minn.]), and the fact that part of the power produced is used in connection with the processing or with the agricultural pursuits of Waialua makes no difference (cf. *Davis v. Goodman Lumber Co.*, 133 F.2d 52 [CA 4]; *Walling v. Connecticut Co.*, 154 F.2d 552 [CA 2]; *Northwest Airlines v. Jackson*, 185 F.2d 74 [CA 8], cert. den. 342 U.S. 812). The work during the off-season, not being performed while any processing is taking place, cannot in any sense be regarded as processing or even incidental thereto. It represents a major overhaul, almost akin to new construction, and is clearly not exempted from the operation of the statute. (*Maisonet v. Central Coloso, Inc.*, 2 W.H. Cas. 753 [D. P.R.].)

4. The employees engaged in servicing the company village are engaged in the production of goods for commerce within the meaning of Section 3(j) of the Act, since their work has such a close and immediate tie with the process of production as to be an essential and necessary part of it. (*Kirschbaum v. Walling*, 316 U.S. 517; *Borden Co. v. Borella*, 325 U.S. 679; *Martino v. Michigan Window Cleaning Co.*, 327 U.S. 173.) The unavailability of other housing, the furnishing of accommodations in order to assure a stable labor force, and the failure to operate the village as a separate profit-making venture, all point to this conclusion. (*Consolidated Timber Co. v. Womack*, 132 F.2d 101 [CA 9]; *Hanson v. Lagerstrom*, 133 F.2d 120 [CA 8].)

The categorical assertion of the Court of Appeals that "* * * agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in the constitutional sense" (216 F.2d at 476) cannot be squared with the decisions of this Court. The reliance of the Court of Appeals (216 F.2d at 476, n. 32) upon *United States v. Butler*, 297 U.S. 1, is vitiated by its own implied recognition in the very same footnote that the later case of *Wickard v. Filburn*, 317 U.S. 111, is to the contrary. Even before the *Wickard* case, and despite the fact that the *Butler* decision was urged upon it, this Court held in *Mulford v. Smith*, 307 U.S. 38, that marketing of tobacco in excess of established quotas (and therefore its production) could be controlled by Congress in the exercise of its commerce power.

In *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755, this Court held that the field employees—ditch riders, lake tenders, and maintenance men—of an irrigation company providing water for farmers who produced agricultural commodities which later moved across state lines were themselves engaged in the production of goods for commerce.

The holding of the Court of Appeals that petitioners Maneja, *et al.*, who are not farmhands, but are full time locomotive engineers, flagmen, railroad maintenance workers, mill workers, plumbers, carpenters, welders, electricians, power plant operators, laboratory technicians, and clerical workers, are not engaged in commerce or in the production of goods for commerce is therefore clearly erroneous. It is flatly contrary to the record; is in

conflict with the clear language of the statute,[11] and flies directly in the face of this Court's decisions.[12]

In the landmark cases involving this statute, this Court gave the statutory definition of commerce a scope sufficiently broad to enable the legislation to meet the evil which Congress sought to remedy. (*United States v. Darby*, 312 U.S. 100; *Kirschbaum v. Walling*, 316 U.S. 517; *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 88; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564; *Roland Electric Co. v. Walling*, 326 U.S. 657; *Alstate Construction Co. v. Durkin*, 345 U.S. 13.) These rulings have been applied in cases dealing with employees of meat processors (*Rutherford Food Corporation v. McComb*, 331 U.S. 722), and of cooperative irrigation companies furnishing water

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[11]Section 3(b) of the Act defines commerce as "trade, commerce, transportation, transmission, or communication among the several states or from any state to any place outside thereof."

Section 3(c) reads:

> "'State' means any State of the United States or the District of Columbia or any Territory or possession of the United States."

Section 3(j) read, at the time herein involved:

> "'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purpose of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State."

[12]That part of the holding of the Court of Appeals, affecting a small minority of employees, that the village service workers were not "engaged in commerce or in the production of goods for commerce", is, petitioners concede, not directly contrary to any specific decisions of this Court. The issue respecting these workers is discussed below at pp. 61-71.

a machine shop, a welding shop, a blacksmith shop, a tinsmith shop, a shop for the repair of caneloading machines, a tractor repair shop, a garage, an electric shop, a carpenter shop, a paint shop, and a plumbing shop. The men employed in these activities are qualified machinists, welders, electricians, painters, carpenters, etc., devoting their full time to their crafts.

A separate plant is also engaged solely in the production of concrete products used in the fields, mill and village.

Waialua's business does not consist of just one operation; it consists of a number of different operations. As reflected by its financial, accounting, cost and personnel records, the company has long been divided into the following separate departments, each performing specialized production functions:

1. Field Department—having to do with the growing of cane and delivering it to the railroad cars.

2. Factory Department—having to do with the manufacture of cane into raw sugar.

3. Service Department—having to do with railroad and truck transportation and the various repair shops.

4. Village Facilities Department—having to do with the upkeep and maintenance of Waialua Village.

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were occupied by 3373 persons. Of the 969 non-supervisory employees in Waialua's employ at the time of trial, all but 16 lived in the village. All of the 22 employees who testified at the trial lived in Waialua Village. Two of them were born there and had never lived any place else. The employees paid for and received housing, housing maintenance, water, fuel, medical care, recreational facilities, and various maintenance services such a garbage disposal and street cleaning.

In addition there are a number of smaller departments such as office, laboratory, agricultural control, etc.

The work of Waialua's employees consists of the following:

1. Preparation of the soil for the planting of sugar cane, planting the seed, cultivating and fertilizing the soil, irrigating, harvesting the crop, loading the crop into railroad cars and hauling them over portable tracks to the main line tracks for transportation to the mill. Since sugar cane is grown in Hawaii on a year round basis, the fields are always in various stages of production or preparation, and the employees who work in the fields move from area to area depending upon the progress of the agricultural program. Employees performing such tasks only were held by the District Court to be excluded from the coverage of the Act as "agricultural" workers, and none of them are involved in this proceeding.

2. Operation and upkeep of the railroad system, and unloading the cars at Waialua's processing mill. For example, petitioner Sera is a section hand on the railroad. He repaired railroad tracks of the main line railroad by replacing worn equipment such as rails, spikes and ties; cleaned and lubricated switches on the main line railroad; maintained rights-of-way of the main line railroad by weeding and cutting trees; graded and leveled uneven sections of trackway on the main line railroad; installed and removed field switches for connecting main line railroad to cane field portable track lines; assisted in clearing train wrecks and repairing derailed locomotives and cars; loaded railroad ties on freight cars in

mill yard; directed traffic as a flagman at railroad crossing of main line railroad. (R. 208-210.)[7] Petitioner Holmberg is a locomotive engineer devoting his full time to this craft, except for a few hours spent in repairing the railroad equipment. Petitioner Okouchi is flagman at railroad crossings, and also does maintenance work along the railroad right-of-way.

3. Working as mechanics, carpenters, welders, blacksmiths, tinsmiths, electricians, painters and plumbers engaged in the maintenance of field, mill and village installations and equipment. For example, petitioners Claunan and Ezawa are mechanics engaged solely in mechanical repair work. Claunan's work as a mechanic consisted of repairing trucks and automobiles in the garage; occasionally repairing concrete products plant equipment, mill equipment, air compressors, equipment used in maintaining the domestic sewer and domestic water supply system in the plantation village, and garage equipment. (R. 220-223.) Petitioner Sunahara as a welder attached to the welding shop repaired the following types of equipment: stable equipment, cane cars, locomotives, mill equipment, equipment for garage, equipment at bathhouse, rolling stock, machine used to plant cane seed, service station equipment, fireroom equipment, hand truck, warehouse building, machine shop equipment, irrigation flume forms, laboratory equipment, herbicide station equipment, stoneboat sled, tractors, electric transmission lines, plows, dwellings, power plant equipment, electrical

[7]Detailed descriptions of the work of all of the employee-petitioners which was held by the District Court to be covered under the provisions of the Act are set forth in the Appendix hereto.

supply system maintained at plantation village for servicing dwellings, hospital equipment, equipment used for maintenance of plantation roads, equipment of plantation irrigation system, fire protection equipment, portable track, trucks, and he also made improvements for dwellings of Waialua's employees. (R. 223-226.) Petitioner Tanaka as a machinist worked solely in the machine shop machining parts for all type of field, transportation, mill and village equipment maintained by respondent. Petitioner Takata is a blacksmith working as such on all types of equipment. Petitioner Sakai is a painter, Kashiwabara a plumber, Mori a carpenter.

4. Operation of the machinery at the cane processing mill where the cane is manufactured into raw sugar for shipment to the mainland refinery, and the repair and replacement of the mill machinery during the annual three months shutdown period. For example, petitioner Oato operates one of the evaporator stations in the mill and performs mill repair work during the period the mill is shut down.

5. Production of steam and electricity for use in the processing mill, the fields, and Waialua Village. For example, petitioner Robello started, operated and stopped generating units; operated switchboard equipment; kept a log of powerhouse operations; made repairs and adjustments to all power plant equipment; supervised equipment which showed the interchange of power between the plantation and the Hawaiian Electric power systems; started, stopped, serviced and repaired air compressors; cleaned and repaired power plant equipment. (R. 218-220.)

6. Working as chemists, clerks and laboratory technicians in connection with the horticultural and manufacturing activities of the respondent. Petitioner Pacheco is employed in the laboratory preparing cane leaves for chemical analysis under the supervision of a chief chemist.

7. Working as carpenters, woodcutters, janitors, street cleaners, road graders and other service personnel in connection with the maintenance of the respondent's town. Petitioner Yamada is attached to the carpenter shop and repairs dwellings in the village. Petitioner Crisostomo operates and repairs a grader used to maintain village roads. Petitioner Fernandez is a village cleaner working on the maintenance and upkeep of employees' houses in the village.

Petitioners Maneja, *et al.* constitute a cross-section of Waialua's employees engaged in all the foregoing activities with the exception of those engaged solely in the work of the Field Department. Those employees are not involved in this case.

After making these detailed findings of fact (R. 190-304), the trial court drew its conclusions of law in substance as follows (R. 304-307):

1. That the court has jurisdiction over the cause of action and the parties.

2. That each of the employees was, while engaged in any of the foregoing activities, engaged in commerce or in the production of goods for commerce, as defined by Sections 3(b) and 3(j) of the Act. (See 97 F.Supp. at 218-219.)

3. That those of the employees who were engaged directly or indirectly, in planting, irrigating, or preparing the soil for planting, or in harvesting, or in hauling the sugar cane from the fields to the corporation's main line railroad tracks, were exempt from the provisions of the Act because they were engaged in "agriculture" within the meaning of Section 13(a)(6) of the Act. (See 97 F. Supp. at 219-220.) For this reason the claims of a number of employees to overtime compensation were denied. Those employees did not appeal to the Court of Appeals. The judgment as to them became final and they are not involved in this proceeding.

4. That those of the employees while, and to the extent that, they were engaged in the refining process at and in the mill, were subject to the processing exemption of Section 7(c) of the Act. (See 97 F.Supp. at 222-223.) For this reason, an additional number of employees were denied overtime compensation during workweeks in which they were so engaged.[8] These employees did not appeal to the Court of Appeals; however, Waialua did, urging that the basis of exemption should have also been Section 13(a)(6).[9]

5. That those employees performing the other types of work heretofore described were entitled to receive overtime compensation in accordance with the provisions of the Act. (See 97 F.Supp. at 218 ff.)

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[8]However, the trial court refused to adopt Waialua's contention that the agriculture exemption applied to these employees.

[9]The question of which is the appropriate exemption is therefore still in the case as to eight petitioners: Hernandez, Dumlao, Kondo, Cumlat, Lazo, Kubo, Hamamoto, and Oato.

6. In those instances where an employee, in a particular workweek, performed some exempt and some non-exempt work, the court held that he was entitled to the benefits of the Act for such workweek. (See 97 F.Supp. at 232.)

A money judgment was entered in favor of those employees held entitled to overtime compensation in amounts ranging from $30.94 to $174.12, plus equivalent amounts as liquidated damages under 16(b) of the Act. The total judgment was $6,729.02. Attorneys' fees in the sum of $2,500 were also assessed.

Thus the District Court's judgment disposed of all claims and issues raised in the company's suit for declaratory judgment and in the employees' counterclaim under Section 16(b) of the Act.

Waialua appealed.

The Court of Appeals reversed because of a claimed "error in approach". (216 F.2d at 468.) It ordered Waialua's complaint dismissed and remanded the counterclaim to the District Court "for proceedings in accordance with this opinion." (216 F.2d at 478.) While in its opinion on rehearing the Court of Appeals said that it had "held that the entire cause was tainted by apparent collusion",[10] it refused to dismiss the counterclaim and said that the employees "may take further proceedings as suggested in the latest opinion of the court". (216 F.

[10]The court's conclusion in this respect appears to be based upon the facts that (1) the parties did not contest "commerce coverage" in this case, and (2) the parties stipulated as to the *facts* respecting the company's operations and the work performed by the employees.

2d at 479.) In that opinion the Court of Appeals said (a) that none of the employees was entitled to the benefits of the Act because none of them was engaged in commerce or in the production of goods for commerce, and (b) that all of the employees were excluded under the agriculture exemption of Section 13(a)(6). (216 F.2d at 468-478.)

SUMMARY OF ARGUMENT.

1. The growing of raw sugar, its transportation to the mill, its manufacture there into raw sugar, its shipment to the United States for refining at the cooperative, and its distribution and sale throughout the nation is the production of goods for interstate commerce within the meaning of Section 3 of the Act. (*Mulford v. Smith*, 307 U.S. 38; *United States v. Darby*, 312 U.S. 100; *Wickard v. Filburn*, 317 U.S. 111; *Rutherford Food Corp. v. McComb*, 331 U.S. 722; *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755.)

2. The employees engaged in the repair and maintenance activities—those engaged in the carpenter shop, the plumbing shop, the electrical shop, the welding shop—are not engaged in agriculture within the meaning of the 13(a)(6) exemption. Neither are the employees engaged in the operation of Waialua's railroad system and those engaged in the operation of its mill. The test is what the employee actually does, not how the employer's business may be characterized. (*Kirschbaum v. Walling*, 316 U.S. 517; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564.) The activities of the employees here involved—the

5. An employee is entitled to be paid at the statutory overtime rate for all work performed by him in any workweek in which any non-exempt work is performed. The unit of measurement under the statute is the "workweek". (*Overnight Motor Transport Co. v. Missel*, 316 U.S. 572; *Shain v. Armour & Co.*, 50 F.Supp. 967 [W.D. Ky.]; *Walling v. DeSoto Creamery & Produce Co.*, 51 F.Supp. 938 [D. Minn.]; cf. *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446; *Wabash Radio Co. v. Walling*, 162 F.2d 391 [CA 6].)

6. The case presents a real and substantial controversy between the parties respecting Wailaua's liability to pay overtime compensation at the statutory rate to the employees here involved. This controversy may be resolved either by a suit for declaratory relief (28 USC 2201) (*Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227; *Tennessee Coal etc. Co. v. Muscoda Lodge*, 321 U.S. 590), or by a suit under Section 16(b) of the Act. The suit is not rendered collusive because the parties agreed that Waialua was engaged in interstate commerce and stipulated to the undisputed facts respecting the operations on its "plantation" in Hawaii. (*Lord v. Veazie*, 8 How. 251.) There can be no question of commerce coverage here. (*Santa Cruz Fruit Packing Co. v. NLRB*, 303 U.S. 453; *Mulford v. Smith*, 307 U.S. 38; *Wickard v. Filburn*, 317 U.S. 111; *Farmers Reservoir & Irrigation Co. v. McComb*, (337 U.S. 775), and certainly stipulations respecting facts do not render collusive, suits involving important questions of statutory construction. (*Lord v. Veazie*, 8 How. 251; *Kirschbaum v. Walling*, 316 U.S. 517; *Rutherford Food Corp. v. McComb*, 331 U.S. 722.) Com-

plete findings of fact having been made by the District Court (97 F.Supp. 198; 216 F.2d 466, 471), and the Court of Appeals having reversed because it disagreed, not on the facts, but on the law (216 F.2d 466), the entire controversy is ready for decision by this Court and the questions of statutory construction here presented should be finally determined now.

7. The Fair Labor Standards Act is an expression of important and significant national policy the aim of which is to increase the living standards of American men and women by excluding from interstate commerce goods produced at standards below those prescribed by the statute. (*United States v. Darby*, 312 U.S. 100; *Kirschbaum v. Walling*, 316 U.S. 517; *Roland Electric Co. v. Walling*, 326 U.S. 657.) For that reason the statute is to be interpreted in favor of broad coverage and all exemptions are to be narrowly construed. (*Phillips Co. v. Walling*, 324 U.S. 490.)

ARGUMENT.

I.

THE HOLDING OF THE COURT BELOW THAT NONE OF PETITIONERS WAS ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE IS ERRONEOUS.

Notwithstanding the undisputed evidence that the end product of the work of petitioners, namely, raw sugar, was all shipped from Hawaii to the mainland, the Court of Appeals, reversing the findings of the District Court, held that none of the petitioners was engaged in commerce or in the production of goods for commerce.

to farmers. (*Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755.)[13]

This Court, in dealing with the analogous Agricultural Adjustment Act, 52 Stat. 31, 7 USC 1281, *et seq.*,[14] has held that the employees of growers of tobacco and wheat are engaged in interstate commerce. (*Mulford v. Smith*, 307 U.S. 38; *Wickard v. Filburn*, 317 U.S. 111.) Similarly, in dealing with the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 USC 601, *et seq.*, this Court has held employees of milk processors to be engaged in interstate commerce. (*United States v. Wrightwood Dairy Co.*, 315 U.S. 110.)

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[13]The court below appears to doubt the soundness of this Court's decision in the *Farmers Reservoir* case, *supra*.

> "It is true that the majority [of the Supreme Court in the *Farmers Reservoir* case] unfortunately accepted the acquiescence of the parties as establishing the constitutional and jurisdictional factor that the employees of a local irrigation company were engaged in a 'process or occupation necessary for the production of goods for commerce.' Thereby the long-standing principle of decision that a constitutional and jurisdictional issue will not be debated or considered unless actively raised by the parties was abandoned. Nor can we accept as an explanation that rationalization leads to quaint results." (216 F.2d at 476-477.)

Whatever this last sentence may mean, it is clear that the court below was in error in suggesting that this Court abandoned a "principle of decision" in the *Farmers Reservoir* case. (See *infra*, pp. 78-81. And even if it thought it were not in error on the point, it should not have undertaken in effect to reverse this Court's decision.

[14]"The Fair Labor Standards Act . . . is part of the social legislation of the 1930's of the same general character as the National Labor Relations Act . . . and the Social Security Act . . . Decisions that define the coverage of the employer-employee relationship under the Labor and Social Security Acts are persuasive in the consideration of a similar coverage under the Fair Labor Standards Act." (*Rutherford Food Corporation v. McComb*, 331 U.S. 722, 723.)

In *Bouie v. Gonzalez*, 117 F.2d 11 (CA 1), it was held that employees of employers who grow sugar cane in Puerto Rico, who operate mills in which the cane is ground, and who deliver the ground cane for transportation to points outside of Puerto Rico, are engaged in interstate commerce. In fact, the court there said that the proposition that such workers are engaged in commerce "is too clear for argument". (117 F.2d at 15.)

The same court in a later case had "no difficulty in holding that insofar as the employees are engaged in the transportation of sugar cane from the farm . . . and are engaged in the repair and maintenance of transportation facilities, they are covered by the Act". (*Calaf v. Gonzalez*, 127 F.2d 934, 936 [CA 1].) Nor have District Courts had any difficulty in finding the Act applicable to employees of employers engaged in such activities as the dehydrating of alfalfa (*Wyatt v. Holtville Alfalfa Mills*, 106 F.Supp. 624 [S.D. Cal.]) and the curing and packing of tobacco. (*Durkin v. Budd*, 114 F.Supp. 865 [N.D. Fla.].)

In Interpretative Bulletin No. 1 issued shortly after the Act was passed in 1938, the Administrator considered the general coverage of the statute (1944, W.H. Man. p. 16) and, after reciting the congressional declaration of policy,[15] said:

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[15] "In the preliminary declaration of policy in Section 2, Congress recited that it sought to remedy certain evils, namely, 'labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general wellbeing of workers,' which Congress found '(1) causes commerce and the channels and instrumentalities of commerce to be used to perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in com-

"From this declared policy of Congress, it is evident that, apart from certain specific exemptions enumerated later in the statute, Congress intended the widest possible application of its regulatory power over interstate commerce; and the Administrator, in interpreting the statute for the purpose of performing his administrative duties, should properly lean toward a broad interpretation of the key words, 'engaged in commerce or in the production of goods for commerce.'" (1944 W.H. Man. at 17.)

As we have seen, this Court in the cases which subsequently came to it confirmed the administrator's interpretation of the scope of the commerce provisions of the Act.[16]

These interpretations of the administrator—to which we will also refer in subsequent portions of this brief—are, while not controlling, entitled to the greatest of weight. *United States v. American Trucking Ass'n.*, 310 U.S. 534; *Roland Electric Co. v. Walling*, 326 U.S. 657, 676.

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merce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.'" (1944 W.H.Man. at 17.)

[16] *Supra*, p. 25.

II.

THE AGRICULTURE EXEMPTION DOES NOT APPLY TO (1) THE REPAIR AND MAINTENANCE MEN IN THE CARPENTER, PLUMBING, ELECTRIC, WELDING AND OTHER SHOPS, AND (2) THOSE EMPLOYEES WHO OPERATE AND MAINTAIN THE COMPANY'S MILL OR ITS RAILROAD SYSTEM.

The Court of Appeals excluded the employees here involved from the benefits of the Act, on the theory that they were "employed in agriculture"; yet the record is clear that those employed were, *inter alia*, carpenters, plumbers, welders, electricians, locomotive engineers and repairmen, section hands, operators of various types of heavy machinery, loaders, clerks, and the like—most of whom never, in the weeks for which they were awarded overtime pay by the District Court, performed farm labor.[17] The basis of the reasoning of the Court of Appeals appears to be that Waialua is a "farmer" and that therefore, irrespective of anything else, its employees should be denied their rights under the statute.

But Waialua is not a "farmer". Waialua operates a variety of establishments on its plantation in Hawaii. While it operates a farm, it also operates a factory (mill), a railroad, repair and maintenance shops, and a company village. Just because some of its employees are engaged in farming does not mean that those not so engaged—the carpenters, or the welders, or the electricians, or the railroad workers—should be denied the benefits of the overtime provisions of the Act.

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[17] Those who did sometimes work as farm hands were denied overtime compensation for those workweeks in which they were exclusively so employed.

We discuss the "commingled" workweek at pp. 71-75, *infra*.

The exemption upon which the company relies, relates to "any *employee* employed in agriculture" (Section 13[a][6]) and the test of its applicability is the character of the *given employee's* work, not what some other employee may be doing or how the employer's business may be characterized. *Kirschbaum v. Walling*, 316 U.S. 517; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564. The Act was very carefully drawn to specify those situations in which the exemption is dependent upon the type of *employer* involved [Sections 13(a)(4), 13(a)(9), 13(b)(2)], and those in which, as here, it is dependent upon the duties of the *employee* [Sections 13(a)(1), 13(a)(3), 13(a)(5), 13(a)(6) and 13(a)(10)]. Here as to each one of the forty employees involved, it must be separately determined whether *he or she* is "employed in agriculture".

The District Court, for reasons already indicated, held that as to the workweeks involved in this proceeding, these employees were not so employed.[18] It is submitted that the District Court was correct and that its judgment must be affirmed.

Agriculture is defined in Section 3(f) of the Act as including:

> ". . . farming in all its branches and among other things . . . the cultivation and tillage of the soil, . . . the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . and any practices . . . performed by a

[18]The Appendix contains a detailed listing abstracted from the findings of the District Court which shows the kind of work, employee by employee, which that court held to be non-exempt. It seems perfectly obvious that persons engaged in the type of work there described are not "employed in agriculture".

farmer or on a farm as an incident to or in conjunction with such farming operations, including the preparation for market, delivery to storage or to market, or to carriers for transportation to market."

The District Court held that the exemption of Section 13(a)(6) was applicable to employees engaged in all activities beginning with the preparation of the land for planting and ending after the harvested cane had been hauled to the mainline railroad. Included in the activities so held exempt from the overtime provisions of the Act were not only the actual planting, cultivating and harvesting of the crop, but also such activities as using tractors to clear the fields for planting; weeding; plowing; using tractors to clear irrigation ditches; using tractors to make beds for portable railroad tracks; burning cane in preparation for harvesting; operating caneloading machines to cut and load cane into cane cars; operating tractors to haul cane cars to and from the mainline railroad; picking up scattered cane in fields; bulldozing cane into piles; making minor repairs to field equipment; and operating the irrigation system.

Conversely, the District Court held that the exemption contained in Section 13(a)(6) did not apply to employees engaged in any activities which occurred subsequent to the receipt at the mainline railroad of the cars loaded with cane. Specifically, the District Court held that the agriculture exemption did not apply to employees who engaged in the operation of the mainline railroad, e.g., the locomotive engineer, the locomotive repair man, the section hand, the crossing watchman; or in the operation of the processing mill, e.g., the cane cleaner, the

crushing plant operator, the evaporator operator, the centrifugal machine operator, or the boiling house employee; or in the bagging and warehousing of sugar, e.g., the bagger and loader, the warehouse clerk; or in the operation of the utility plant, e.g., the boiler fireman, the power plant operator; or in the performance of maintenance and repair work, e.g., the automobile mechanic, the welder, the machinist, the tractor mechanic, the cane-loading machine repair man, the blacksmith, the painter, the concrete products operator, the plumber, the carpenter; or in the performance of such miscellaneous occupations as clerk-stenographer, truck driver, road grader, laboratory technician, and utility clerk.

The view of the District Court was concurred in by the Secretary of Labor who is charged with the duties and responsibilities of administering the Act.[19]

The Court of Appeals, however, was of the view not only that "agriculture . . . is not commerce", but also that even if it were, all of the employees of Waialua were exempt from the overtime pay provisions of the Act by virtue of Section 13(a)(6). In other words, the Court of Appeals was of the view that all of the employees engaged in the operation and maintenance of Waialua's sugar mill, repair shops, railroad facilities and village community were engaged in agriculture.

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[19]This position has been consistently taken by the Administrator since 1941 when a written ruling on the subject was promulgated. "It would seem from the Court's decision [*Bowie v. Gonzalez*, 117 F.2d 11 (CA1)] that the exemption for agricultural employees provided by the Wage and Hour law does not apply to sugar mill employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner in his field." (1944-45 W.H.Man. 564, note.)

Since the ultimate, and indeed the sole, object of Waialua's operation is the production of sugar and molasses, and since these commodities are manufactured at the mill, it may be more forcefully argued that the operation of the mill is the dominant element and that the growing of the sugar cane is only subordinate or incidental. Therefore it follows that Waialua is not a "farmer" at all but is a manufacturer and none of its employees are engaged in agriculture. This view is reinforced when it is realized that in reality the ultimate objective of all of Waialua's activities is the refining of the raw sugar at the cooperatively owned refinery in California and its subsequent sale from that place. However, we need not rely on this argument, forceful as it is, since it is enough to assert that in order to accomplish its ultimate objective of producing sugar and molasses, Waialua engages in many separate and distinct enterprises appropriate to that end. These enterprises include manufacturing, repair and maintenance, and transportation, in addition to farming. It is only with the employees engaged in the former enterprises that we are here concerned. The fact that Waialua has placed all these separate economic functions under one ownership cannot conceal the essential non-agriculture character of its manufacturing, maintenance and transportation activities, nor submerge the fact that it operates a hybrid type of business in which it functions not only as a farmer but also as a manufacturer, a general repair and maintenance contractor, a railroader, and an operator of a substantial company village.

That Waialua does function in this way is manifest from the record. Its acreage includes in addition to a

farm, a manufacturing plant, repair shops, transportation facilities and a company village. These non-agricultural operations are conducted so as to "assume the character of a distinct business enterprise of an industrial nature". (97 F.Supp. at 22.) They are conducted in buildings separate, and in an area distinct, from the growing fields and they account for a substantial portion of Waialua's operating charges. The actual separation of functions is demonstrated in a variety of ways. The areas allotted to farming are distinct from those allotted to processing or maintenance or railroading. Organizationally the functions are separated: the farming operations are performed through a Field Department headed by a Field Superintendent; the processing, railroading and repair operations are performed through a Factory and Shop Department headed by a Factory Superintendent. Waialua segregates its operating charges into cultivating, irrigating, harvesting, general field expense, transportation, and manufacturing items. The mill and railroad are operated by separate work forces which do no work in the field.[20]

This analysis of Waialua's operations is not only supported by the record, but parallels this Court's holding in *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755. In that case, which clearly supports the view

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[20]The fact that some field workers occasionally work in the mill is of no significance since the issue with respect to each employee here involved revolves about the type of work that employee performed in a given workweek. When a field worker temporarily becomes a mill hand, he is entitled to the benefits of the overtime pay provisions of the statute. And vice versa, should a mill hand work exclusively as a field laborer, he would derive none of those benefits.

of the District Court and the Secretary of Labor, this Court held that the employees of a mutual irrigation company owned by farmers, and which distributed water to their individual farms, were not exempt under Section 13(a)(6).

In reaching its conclusion this Court analyzed the exemption as follows:

> "First, there is the primary meaning. Agriculture includes farming in all its branches. Certain specific practices such as cultivation and tillage of the soil . . . are listed as being included in this primary meaning. Second, there is the broader meaning. Agriculture is defined to include things other than farming . . . It includes any practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm incidentally to or in conjunction with 'such' farming operations." (337 U.S. at 762-763.)

Clearly, Waialua's processing employees who are engaged in manufacturing, its transportation employees who run its railroad, its maintenance employees—carpenters, plumbers, welders, and electricians—are not engaged in farming within the primary meaning of the Section 13(a)(6) exemption. One would have to ignore the undenied facts to hold that such persons are excluded from the benefits of a statute the exemption from which deals with the cultivation, growing and harvesting of agricultural products.[21]

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[21]The argument, made by Waialua below, that because the railroading or processing exemptions were "necessary" to the agriculture operation (an assumption which is questionable at best), the former are a "part" of agriculture has been rejected by this

Nor do those employees come within the so-called "broader meaning" because neither of the conditions therein is here satisfied. That is to say, Waialua does not perform its manufacturing, railroading, repair and village maintenance operations in its capacity as a farmer or on its farm, nor are such operations performed as an incident to or in conjunction with its farming operations. For the fact of the matter is that the milling and railroading and related activities are not performed on the farm, but in areas clearly set aside for those purposes. Nor are they performed by a "farmer" in the accepted sense of the word; rather they are performed by an employer who, while he engages in farming on the one hand, engages in large scale manufacturing and railroading operations on the other.

An apt analogy would appear to be that of an employer who manufactured cotton goods in a factory located on a farm which the same employer owned and on which cotton was grown. If Waialua's argument is sound, then the employees in the factory who process the raw cotton into cloth would be exempt because the operation was performed by a "farmer", on its "farm", or at least because it was "incidental" to farming. Certainly there is nothing in the Act to countenance such a result.

Court. A substantially similar argument was made in the *Farmers Reservoir* case and the court said of it that it was based upon a "misconstruction" of Section 3(j) of the Act.

> ". . . the conclusion that work is *necessary* to agricultural production does not require us to say it *is* agricultural production . . . The question here is whether the occupation of the field employees of the company can itself be termed agriculture. The answer to that question is not predetermined by the fact that the occupation . . . has a necessary connection with agricultural production." (337 U.S. at 759-760; italics by the Court.)

Another analogy is suggested by those chain store corporations which operate on both a wholesale and a retail level. Since the Act provides (Section 13[a][2]) an exemption for employees of retail, but not wholesale, establishments, problems have arisen respecting the employees in the central offices and warehouses of such corporations.

In *Phillips v. Walling*, 324 U.S. 490, 495, for example, this Court recognized that "in a realistic sense" most such organizations are "institutions . . . of a hybrid retail-wholesale nature. *They possess the essential characteristics of both* the retailer and the wholesaler". Since it found that the employees in the central offices and warehouses served the economic function of the wholesaler, rather than the retailer, it denied the exemption.

Just as the central office and warehouse employees of a chain store may not be deprived of the benefits of the Act merely because their services are for the ultimate benefit of the "exempt" retail outlet, so Waialua's employees in its separate repair and service shops, its garage, its manufacturing, railroading, and village maintenance activities cannot be excluded from the coverage of the statute simply because the services of those activities are restricted to the products of its farm.

In *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, this Court recognized that the solution to the question here posed turned largely upon an analysis of the manner in which the employer organized itself to produce the varied tasks which were necessary to accomplish the ultimate end.

> "Whether a particular type of activity is agricultural depends in large measure, upon the way in which that

activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is chracterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. *In this way functions which are necessary to the total economic process of supplying an agricultural product, become in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it.* Thus, the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function *or is separately organized as an independent productive activity.* The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. *But the maintenance man in a power plant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done*

by the farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture." (337 U.S. at 761.)

Since Waialua does not perform these non-agricultural operations as a farmer, and since they are not performed on a farm but rather on a separate and distinct non-agricultural portion of the plantation, the exemption does apply. Further, it does not apply since the operations in question are not conducted as an "incident to" or in "conjunction with" the farming operations.

This last requirement—of "incidence" or "conjunction"—is not satisfied merely because the processing, railroading and maintenance activities necessarily occur subsequent to the growing and harvesting of the sugar cane. In the nature of things, processing is performed subsequent to harvesting, and if Waialua's argument is sustained, then the line between agriculture and manufacture will be obliterated, and in the illustration earlier given it may well be that the agriculture exemption would apply to the manufacturer of cloth from cotton on the ground that such manufacture is incident to or in conjunction with a farming operation. Other sections of the Act show a congressional design to treat separately many types of operations which are incident to or in conjunction with farming only in the sense that they are performed upon agricultural commodities subsequent to harvesting.[22]

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[22]For example, Section 13(a)(10) reads: "The provisions of Sections 6 and 7 shall not apply with respect to . . . any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing,

Furthermore, Waialua's transportation and manufacturing activities cannot properly be regarded as being performed in conjunction wih or incident to its farming operations. They occur separately from and subsequent to the farming operations. Their substantial as distinguished from their incidental importance in relation to the farming operation is demonstrated by the fact that the direct operating charges attributable to the manufacturing and transportation alone represent approximately forty per cent of all other charges including those for agriculture. The manufacturing and transportation activities require organization, equipment and skills quite unrelated to farming. A separate work force is employed for the manufacturing operation; it does no work in the fields; it is paid on a different basis from that used for the work force in the fields. In the transportation operation, Waialua employs not farm hands nor mill hands, but skilled railroad operators, whose function it is to handle locomotives and moving cars, not agricultural products, and to maintain railroad beds, tracks, roundhouses, etc., all of which is quite unrelated to farming. Since neither the milling function nor the transportation function is performed in conjunction with or incident to the farming function, it follows that the repair and maintenance of the equipment used in the mills and on the railroad cannot come within the exemption of Section 13(a)(6).

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ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; . . ."

See also Section 7(c), *supra*, p. 4.

On this phase of the case Waialua argues that because all its varied functions are performed by a single owner, the agriculture exemption applies throughout. But as the Court of Appeals for the First Circuit said in *Calaf v. Gonzalez*, 127 F.2d 934, 938 (CA 1):

> "What we have in the case before us is a mill engaged in the processing of sugar cane and also engaged in the transportation of that sugar cane from farms to mill. There seems to be no rational basis for saying that simply because the ownership of the mill and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provisions of the Act."

The *Calaf* case, squarely in point here, involved precisely the same kind of hybrid operation in Puerto Rico, and arguments similar to those advanced by Waialua here were, with good reason, rejected there.

Waialua argues that every farmer is a "shipper" in the sense that he transports his products from field to storage or to a processor or to market, and that every farmer is a "manufacturer" to the extent that he cans or otherwise processes his produce (Brief in Opposition in No. 357, pp. 13-14), and that therefore these activities should not deprive it of the agriculture exemption. But Waialua fails to recognize that farmers generally do not have the elaborate industrial and railroad facilities found upon Waialua's plantation nor do farmers generally perform their carrying and processing functions through separate departments which employ large numbers of specially skilled craftsmen who do no farming. To apply the agriculture exemption to Waialua's manufacturing

and railroading activities would be to apply to Hawaii a different rule from that which the courts have for many years applied to the sugar producing area of Puerto Rico. *Bowie v. Gonzalez*, 117 F.2d 11 (CA 1); *Calaf v. Gonzalez*, 127 F.2d 934 (CA 1); *Vives v. Serralles*, 145 F.2d 552 (CA 1).

In *Bowie v. Gonzalez*, which was the first case presenting the question of the application of the Section 13(a)(6) exemption to the employees of an employer who grew sugar cane and processed it into raw sugar, the court held that the exemption did not apply to the processing operation. While it is true that in that case a portion of the cane which was processed was grown by growers other than the processor, that difference from the case at bar is relevant only to one of the bases upon which the court ruled. The other two express bases for the court's ruling are clearly applicable here.

The court, referred to the legislative history of Section 13(a)(6), and concluded that the purpose of the exemption was

> ". . . to make certain that independent contractors such as threshers of wheat, who travel around from farm to farm to assist the farmers in what is recognized as a purely agricultural task, should be included within the definition of agricultural exemption . . . See 81 Cong. Rec. 7876, 7888". (117 F.2d at 18.)

Such a basis for holding that the processing of the cane into raw sugar came within the agriculture exemption was not present in the *Bowie* case, nor is it present here.

Secondly, the Court of Appeals recognized that the reason for the creation of the exemption did not apply to the employees engaged in the processing operation.

"Furthermore, it would seem that the employees involved in this case would not fall within the reason for the exemption which was accorded to agricultural employees. The Act was drawn not to include the latter because agricultural labor was not subject to the usual evils of sweatshop conditions of long hours indoors at low rates. Also any attempt to regulate agricultural wages would present a difficult problem since a substantial part of the agricultural worker's income must of necessity be for board and room. The employees in the instant case are typical factory workers or laborers engaged in maintaining industrial facilities. The exemption of agricultural labor from the operation of the Act is not admissible as an argument to exempt labor in an industry from its operation". (117 F.2d at 18.)

This reasoning is also applicable here.

After the *Bowie* decision the Administrator modified a prior opinion which he had issued respecting the application of the 13(a) exemption to sugar mill employees.

"It would seem from the court's decision that the exemption for agricultural employees provided '... the Wage and Hour Law does not apply to sugar mill employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner in his own fields." (1944-1945 W. H. Man. 564, note.)[23]

The Administrator has adhered to this view consistently since 1941. In 1949 the Congress provided (63 Stat. 910, 920) that all past orders, regulations and interpretations of the Administrator were to remain in effect. *Alstate Construction Co. v. Durkin*, 345 U.S. 13, 17.

[23]The propriety of the Administrator's modification of an earlier view in the light of further experience and judicial decision is recognized in *Alstate Construction Co. v. Durkin*, 345 U.S. 13, 16.

In *Calaf v. Gonzalez*, 127 F.2d 934 (CA 1), the court was concerned with the application of the agriculture exemption to employees working in the railroad facilities which were used to transport the cane to the sugar mill. In that case, as already stated, the mill, the railroad and some of the farms on which the cane was grown were all owned jointly by the defendants and, as already noted, despite such common ownership, the exemption was denied. Furthermore, although the railroad transported cane grown on farms owned not only by the employer but by one independent farmer, the court *expressly* refused to base its decision on that narrow ground.

> "We place our decision, however, on the broader ground that the transportation of sugar cane is incident to milling rather than to farming and therefore is not exempt under the Act". (127 F.2d at 936-937.)

Certainly, if the agriculture exemption is not applicable to transportation workers because transportation is an incident to milling rather than to farming, it must follow that the exemption is inapplicable to the mill employees themselves.

The reasoning of these two cases which refused to apply the agriculture exemption to the operation of a main line railroad and to the manufacture of raw sugar, was followed in *Vives v. Serralles*, 145 F.2d 552 (CA 1), where one owner operated *all* the farm lands, the transportation facilities, and the mill. In this case the court reaffirmed the principle of the *Calaf* decision that transportation is an incident to milling rather than to farming, but held that such transportation did not begin until the cane was deposited at storage points alongside the mainline rail

oad. In other words, so much of the transportation s occurred on the portable tracks was in effect held to e part of the harvesting. But once the cane was placed n a position where it could be loaded on cane cars and auled by locomotives over permanent railroad tracks, he court held that the agriculture exemption was no onger applicable. In the case of Waialua, the "concen- ration point" is exactly the same, that is, the point here the cars loaded with raw sugar are deposited along- ide the main line railroad for transportation to the manu- acturing plant. And the reasons which led the Court f Appeals for the First Circuit to fix this dividing line t the place at which the portable tracks met the perma- ent tracks are equally applicable to the case at bar. It eems reasonable and proper to choose this point as the lace where the agricultural activity, including the har- esting, ends. From here on out the product of the soil s handled not by farm employees but by technicians and pecialists, railroad men and mill hands. These employ- es should not be deprived of the benefits of the Act be- ause they are transporting and processing a product of he soil any more than any other railroad employee or ndustrial worker is deprived of the benefits of the Act ecause, upon tracing it back, some connection can be ound between the product which he is transporting or on hich he is working, and its original natural state in griculture.

Thus the National Labor Relations Board has held that he "agriculture" exemption contained in the National abor Relations Act (49 Stat. 449, 29 USC [1940 Ed.] 51 *et seq.*) does not apply to employees of Hawaiian ugar producers engaged in transportation, milling, repair

nd clerical work on the plantations. (*Pepeekeo Sugar Co.*, 9 N.L.R.B. 1532.)[24] Similarly, the District Court for the erritory of Hawaii held as recently as July of 1953 that ne transportation and milling employees of Waialua self were not agricultural laborers within the meaning f the Labor Management Relations Act of 1947 (61 tat. 163, 29 USC 141, *et seq.*) (*Waialua Agricultural Co. United Sugar Workers*, 114 F.Supp. 243.)

Finally, it is perfectly obvious that processing (and ransportation incident to it) is not agriculture, since in ne Act itself there are *separate* and *distinct* exemptions ealing with these two subject matters. If the 13(a)(6) xemption did indeed include the processing of agricul- ural products, there would have been no need or occa- ion to include the 7(c) exemption in the Act.

> "The most convincing argument that the processing of sugar cane into sugar was not included within the term 'agriculture' is found in the provisions of Section 7(c). All the sections relating to exemptions are in pari materia and must be construed together to form a consistent whole, if possible. Section 7(c) exempts from the hours provisions of the Act the processing of sugar cane into sugar. If such processing

[24] "Although the term 'agricultural laborer' is not defined in ne Act, its meaning is not obscure. The guidepost is the ordi- ary meaning of the phrase, that stemming from common usage nd common understanding. The term 'agricultural laborer,' as ommonly understood, refers to a person employed on a farm in ne cultivation of the soil, including the harvesting of crops and ne rearing and management of livestock. Only confusion results rom an extension of the meaning of the phrase 'agricultural la- orer' beyond its customary sense. If the Companies' argument ere accepted, some anomalous conclusions would result: e.g., loco- notive engineers, conductors, brakemen, engine oilers, machinists, elders, bricklayers, service station attendants, toolroom attend- nts, and stockroom clerks employed by the Companies would per- orce become agricultural laborers." (59 NLRB at 1537.)

is included within the term 'agriculture' it would be entirely exempt from the Act and the specific inclusion of such processing in the exemptive provision of Section 7(c) would be unnecessary. But the construction of the word 'production' in Section 3(f) to mean agricultural production is entirely consistent with Section 7(c), which provides specific exemptions for certain detailed processing of agricultural commodities." (*Bowie v. Gonzalez*, 117 F.2d at 17.)[25]

III.

E PROCESSING EXEMPTION DOES NCT APPLY TO THOSE EMPLOYEES (1) WHO OPERATE OR MAINTAIN THE COMPANY'S MAIN LINE RAILROAD, (2) WHO WORK IN THE VARIOUS GENERAL REPAIR SHOPS, (3) WHO GENERATE STEAM AND ELECTRIC POWER, AND (4) WHO REPAIR AND MAINTAIN THE MILL IN THE OFF SEASON.

Section 7(c) provides that:

> "In the case of an employer engaged . . . in the processing of sugar cane . . . into sugar (but not refined sugar) . . . [the overtime provisions of the Act] shall not apply to his employees in any place of employment where he is so engaged."

The District Court held this exemption to be applicable employees who operated the processing machinery in mill and performed activities closely connected thereı; the District Court also held this exemption to be

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Not only did Congress recognize the two exemptions as sep- and distinct, but for reasons of policy it treated them dif- ıtly. The 13(a)(6) exemption applies to *both* the maximum s *and* minimum wage provisions of the Act; the 7(c) exemp- applies only to the hours (overtime) provisions.

applicable to the employees who repaired and maintained the mill and the mill machinery during the weekend shutdown. Specifically, the processing exemption was held to apply only to employees who performed the following tasks: weighing incoming cane cars at the mill, operating machinery for moving loaded cars into and empty cars out of the mill, coupling and uncoupling cars at the mill, collecting car tickets, regulating the flow of cane through the crushing mills, operating the machinery which boiled and crystallized sugar, operating the machinery which bagged sugar, loading such bagged sugar into boxcars or storing it in warehouses, and cleaning and making minor repairs to boiling house equipment. The Secretary of Labor supported this view of the District Court.

Waialua argued in the Court of Appeals that this exemption should also have been applied to employees who operated the main line railroad which transported the sugar cane into the mill, to employees who repaired and maintained the railroad facilities, to employees who repaired and maintained the mill equipment during the off-season when no processing was taking place, and to employees who generated electricity and power for general use on the plantation.

The Court of Appeals said the arguments of the employees and of the Secretary of Labor on this phase of the case were "rendered immaterial" by its decision. (216 F.2d at 478, n. 45.) Presumably this was because it had already held that "agriculture is not commerce" (*supra*, pp. 23-28) and that in any case the 13(a)(6) exemption removed all of Waialua's employees from the coverage of the Act. (*Supra*, pp. 29-47.)

The District Court's ruling on this phase of the case was so clearly correct that its decision should be affirmed without more by this Court.[26]

On its face, Section 7(c) applies (1) only if the employer is engaged in a described operation (here the processing of sugar cane), and (2) only to those employees who work in the place of employment where the employer is so engaged. Both tests must be met before the exemption applies.

Obvious it is that the exemption is not co-extensive with all of the activities engaged in by the employer who happens also to be engaged in the processing of sugar cane. Otherwise, if an employer engaged in one exempt and many non-exempt activities, all of his employees would lose the benefits of the overtime provisions of the statute. That is not the case. To fall within the exemption the employees must, at the very minimum, be themselves engaged in the exempted operation. In other words, if an employer processed sugar but also engaged in railroading or general maintenance work (as Waialua does here), only those of its employees who had to do with the processing operations as distinguished from the maintenance or the railroading, would meet the first test of the section.

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[26]In its Brief in Opposition in No. 357 (p. 12), Waialua argues that the decision of the Court of Appeals, even though erroneous on other grounds, may be sustained by the "exemption of sugar cane processing in Section 7(c)." Anticipating that such a contention might be made, the employees in their petition for certiorari in No. 357 (pp. 3-4, n. 3) noted the bases upon which they contend that the decision of the District Court was correct and should be affirmed here.

But that is not all. Even such employees must, in order to be deprived of the benefits of the Act, perform their work in the place where their employer is engaged in the exempt activity. If they perform it in some other place, they do not fall within the language of the statute even though their activities at such other place may, in a generally broad sense, be said to be incidental or even necessary to such processing.

In August of 1939 the Administrator issued his Interpretative Bulletin No. 14 (1941 W. H. Man. 314-328) in which he considered the exemptions established by Section 7(c) of the Act. In this connection the Administrator pointed out that the section grants

> ". . . a complete exemption from the hour provisions to employees 'in any place of employment' where his employer is engaged . . . in the processing of . . . sugar cane . . . into sugar (but not refined sugar) or into syrup." (1941 W. H. Man. at 320.)

He further pointed out that the purpose and legislative history of the exemption clearly indicate that unless the employee is employed in the actual "department" where the processing operation is physically carried on, he is not exempt.

> "The determination as to whether all the employees of the employer who are working in the establishment are included in the exemption or whether the exemption applies to only such employees as perform the operations described in the section must be made in the light of the legislative history of Section 7(c). The Congressional debates show that the purpose of this Section was to relieve processors of seasonal agricultural commodities from the hour provisions of

the Act so as to enable them more easily to conduct their operations during peak seasons. It is our opinion, therefore, that only the employees who perform the operations described in Section 7(c) or who perform operations that are so closely associated thereto that they cannot be segregated for practical purposes, and whose work is also controlled by the irregular movement of commodities into the establishment, are covered by the exemption. For example, in the ordinary case, none of the employees in a department separate from the department in which the exempt operations are performed will be exempt. Thus, employees working in the meat-curing or sausage-making departments of a meat packing house will not be within the exemption." (1941 W. H. Man. at 323-324.)

In a case dealing with the Section 7(c) exemption relating to employees engaged in the handling, slaughtering or dressing of poultry or livestock, the court adopted similar reasoning and limited the exemption to those employees only who functioned within the "department" directly engaged in processing. *Fleming v. Swift & Co.*, 41 F.Supp. 825 (N.D. Ill.), affirmed 131 F.2d 249 (CA 7).

"Sec. 7(c) of the Act does not exempt industries from the overtime provisions of the Act, but only the specific processes therein mentioned.

"The term 'place of employment' as used in sec. 7(c) of the Fair Labor Standards Act means *those portions of the plant* devoted by the employer to the handling, slaughtering, or dressing of livestock as those terms are construed herein. In addition to the employees specified in conclusion of law No. 6, any employee whose employment during any workweek is *wholly within the place of employment*, as herein

> defined, and who during that workweek is working *exclusively* in an occupation which is a necessary part of the handling, slaughtering or dressing of livestock, also comes within the exemption of sec. 7(c) of the Act." (41 F.Supp. at 831.)

In *Walling v. Bridgeman-Russell Co.*, 2 W. H. Cas. 785 (D. Minn.), the court was concerned with the application of the 7(c) exemption to an employer engaged in the processing of milk and cream. It said:

> "Section 7(c) does not exempt industries from the overtime provisions of the Act, but only the specific processes therein mentioned.
>
> "The term 'place of employment' as used in Section 7(c) of the Act means *those portions of an establishment* devoted by the employer to 'first processing' operations. The section 7(c) exemption is applicable to any employees who perform *exclusively* the operations described in this Section, and any employees who, though not engaged in 'first processing' operations, are engaged *exclusively* in occupations which are a necessary part thereof and perform such duties *in those portions of the premises devoted* by the employer to 'first processing' operations." (2 W. H. Cas. at 790.)

The District Court was obviously correct in holding that employees here involved who were engaged in general maintenance and repair or in the operation of the railroad system were not employed at the "place of employment" where the processing occurred. The carpenters, plumbers, welders and electricians work in shops separate from the mill. The train crews, section hands and watchmen all work along the 56 miles long main line track;

the railroad repair men work in the roundhouse, not the mill. For the same reasons Section 7(c) does not exempt employees who generate power, or work at village maintenance. None of the employees here mentioned engage in processing or any part of it, nor is their work so integrated with it as to be incapable of segregation.

Waialua itself did not treat the repair shop employees as part of its mill operations. Payrolls and cost accounting records for tax purposes show the employees of the repair shop separately grouped from the mill hands. The repair shop employees were not occupationally attached to the mill. The headquarters out of which they worked was in each case a separate structure where they performed the major portion of their work, to which they reported each day, and at which they received supervision and instruction. These buildings were located at various distances from the mill. When occasion required the employees to be elsewhere than in the repair shops, they performed their services for every operation on the plantation and not for the mill exclusively. Generally, most of them did not perform any work inside the mill except during the off-season when processing was entirely suspended to permit major repairs, overhauling, and the installation of new machinery. The repair shop employees were under separate foremen and supervisors from the mill hands. There was no interchange, save possibly during the off-season, of personnel, equipment or materials between the mill and the repair shops. The repair shops constituted self-sufficient units not operated as an incident to any other operation but rather as one of the separate enterprises

jointly conducted by Waialua. If the employees of an independent machine repair shop performed the repair activities here under discussion, they would not be exempt from the provisions of the Act.[27]

Apart from the foregoing there are several employees who, while working in the mill, are not themselves engaged in processing sugar cane. One of them, for example, operates the electric generator in the powerhouse which supplies electric power for "operations throughout the plantation" (R. 218), including of course the covered and non-exempt railroad, roundhouse and office. Another operates the machinery in the fireroom which produces the steam used to power the electric generator and in the mill. Even if such employees are regarded as being employed "in" the place where their employer is engaged in processing sugar cane (because such processing takes place in other rooms in the same building), the District Court was correct in holding the 7(c) exemption inapplicable to them. This is so because their duties also included the production and distribution of power for activities not exempted by any provision of the statute.

Where exemptions are provided for "any employee" of designated types of employers, it has been held that if the employer engages in both exempt and non-exempt activities, his employees whose duties relate to the non-exempt, as well as to the exempt, phase of the business are not deprived of the benefits of the Act. Otherwise,

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[27]The fact that the work was done by employees of Waialua—the single owner of the various enterprises—affords no basis for applying the exemption. Cf. *Calaf v. Gonzalez*, 127 F.2d 934 (CA 1).

as already pointed out, an employer could engage in many assorted businesses and claim exemptions for all of his employees simply because one of the enterprises fell within the language of Section 7(c).

Thus it has been specifically held that employees engaged in the production of steam and electric power are not within the 7(c) exemption. In *Walling v. Bridgeman-Russell Co.*, 2 W.H. Cas. 785 (D. Minn.), the court held that this exemption did not apply to employees who, although they worked "in" the same place of employment as others whose activities were exempt, generated steam and power used exclusively for operating equipment and heating and lighting the building where both exempt and non-exempt activities were carried on. Similarly, *Shain v. Armour & Co.*, 50 F.Supp. 907 (W.D. Ky.), also involved the application of the 7(c) exemption to employees "engaged in producing steam, heat and power" for exclusive use in the same building in which exempt and non-exempt processes occurred. The court held the exemption was inapplicable because "Section 7(c) of the Act does not exempt industries as a whole from the overtime provisions of the Act, but only those specific processes therein mentioned". (50 F.Supp. at 911.)

The same principle has been applied to the so-called "employer" exemptions provided in other portions of the Act. For example, *Walling v. Connecticut Co.*, 154 F.2d 552 (CA 2), involved employees engaged in the production of electric power for use by their employer, a local trolley carrier. Since Section 13(a)(9) exempts "any employee" of such an employer, the contention was made

that *none* of the employees were entitled to the benefits of the Act. The court said:

> "Literally, that contention is correct. But it would mean that, no matter in what business, however extraneous to its functioning as a 'local trolley carrier,' defendant engaged, those employed in that extraneous business would be exempt. The policy of the Act, disclosed in its history, precludes the acceptance of such a literal construction."[28] (154 F.2d at 553.)

So, here, the use of part of the power for the operation of the non-exempt railroad and the other non-exempt activities makes the processing exemption inapplicable to the employees here involved.

Another example of the refusal to apply the literal terms of an exemption because to do so would produce a result not fairly within the Act's purpose, is found in *Northwest Airlines v. Jackson,* 185 F.2d 74 (CA 8), cert. den. 342 U.S. 812. There the exemption in Section 13(b)(3) for "any employee of a carrier by air" was held not to apply to employees of such a carrier whose duties related not to such carriage but to other aspects of the employer's business. Similarly, in *Davis v. Goodman Lumber Co.,* 133 F.2d 52 (CA 4), the exemption in Section 13(a)(2) for "any employee employed in any retail or service establishment" was held inapplicable

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[28]Markham v. Cabell [326 U.S. 404], 66 S.Ct. 193; A. H. Phillips, Inc. v. Walling, 324 U.S. 490, 493, 497, 65 S.Ct. 807, 157 A.L.R. 876; Walling v. Jacksonville Paper Co., 317 U.S. 564, 571, 63 S.Ct. 332, 87 L.Ed. 460; Roland Electrical Co. v. Walling, 66 S.Ct. 413; Phillips v. Star Overall Co., 2 Cir., 149 F.2d 416, 420; Collins v. Kidd Dairy & Ice Co., 5 Cir., 132 F.2d 79, 80; Davis v. Goodman Lumber Co., 4 Cir., 133 F.2d 52, 54; Walling v. Peoples Packing Co., 10 Cir., 132 F.2d 236. [Court's footnote.]

to employees working in the manufacturing end of the employer's retail establishment.

> ". . . the employees engaged in the manufacturing business of the Goodman Company were entitled to the protection of the statutory standards, although by far the greater part of the corporation's business consisted of a retail establishment chiefly engaged in intrastate commerce, whose employees were exempt from the wage and hour provisions of the Act. The propriety of applying the Act to a separate and distinct department of an employer's business while recognizing that another part is exempt from the statute, has been recognized in similar situations. Fleming v. Hawkeye Pearl Button Co., 8 Cir., 113 F. 2d 52; Fleming v. American Stores Co., D.C.E.D. Pa., 42 F. Supp. 511." (133 F.2d at 54.)

To the same effect are *Wabash Radio Corp. v. Walling*, 162 F.2d 391 (CA 6), and *Western Union Telegraph Co. v. McComb*, 165 F.2d 65 (CA 6), cert. den. 333 U.S. 862.

In addition, generation of steam and power are not the *processing* of sugar cane no matter how "necessary" they may be to that processing, any more than maintenance railroading or milling *are* agriculture because they are "necessary" to it. (See *supra*, p. 25, n. 21.)

Neither does the work performed upon the "bagasse" (the byproduct of the sugar cane used for fuel) come within the processing exemption. The Administrator recognized this fact in his 1939 Interpretative Bulletin already referred to.

> "Operations performed on bagasse, such as removing same from the sugar mill, baling and compressing, are not included in the exemption, since such opera-

tions do not constitute the '*processing of* * * * *sugarcane*' and further such operations do not *result in* sugar and syrup. The exemption, it should be noted, is limited to the processing of sugarcane '*into sugar* * * * or into syrup'." (1941 W.H. Man. at 321.)

Finally, Waialua argued below that the processing exemption applies even during the so-called "off-season" when new machinery is installed and extensive repairs are made to the mill equipment. During this three or four month period of time, no raw sugar whatsoever is produced, nor is any cane harvested, transported or processed.

The District Court's ruling that the exemption does not apply to this period of time is consistent with the legislative purpose of the Act and is in accord with the decided cases. For not only must the employee who is to be excluded from the benefits of the Act be employed "in the place" where the processing occurs, but for the exemption to apply the employer must *be engaged* in the processing operation at the time the exemption is claimed.

Section 7(c) commences by limiting its application to the "case of an employer engaged in . . . processing . . ." Clearly, when the employer's mill is shut down for maintenance and repairs to old machinery and for the installation of new machinery for a three month period of time, the employer is not *at that time* engaged in processing.

In *Maisonet v. Central Coloso, Inc.*, 2 W.H. Cas. 753 (D. P.R.), the court had before it the very contention here advanced by Waialua. In Puerto Rico, as in Hawaii,

there is a substantial period of each year during which the sugar mills are closed down for repairs and no raw sugar is processed. The employers nonetheless contended there, as Waialua does here, that the 7(c) exemption applied during such "off" or "dead" season. In rejecting this contention the court said:

> "The primary purpose of the exemption in question is to permit the employment of persons in seasonal industries, particularly where perishable commodities such as sugar cane are concerned, without the hardship of paying overtime. 'Sugar cane is highly perishable and must be ground very soon after it is cut' (Bowie v. Gonzalez, 117 F.2d 11, 14 [1 WH Cases 99, 100]). But this situation does not obtain during the dead season. There is no similar reason why employees should work more than 40 hours in 'construction and repair work and preparation of the mill for the coming grinding season (zafra).'
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> "The administrator, who has filed a brief as amicus curiae, cited Fleming v. Hawkeye Pearl Button Co., 113 F.2d 52, 57 [1 WH Cases 81, 85] (C.C.A., 8th Cir.) as authority for his contention that 'processing should be limited to these activities which have to do with the conversion of sugar cane into raw sugar and those operations which are so related thereto that they should be considered to have been included.' The Administrator's position seems well taken. In addition to the fact that employees working during the dead season do not come within the purpose of the exemption, it would seem, under the rule of strict construction of exemptions, that during the time these employees work in repair and maintenance,

their employer is not 'engaged in the processing of sugar cane into sugar.'" (2 WH Cases at 755-756.)[29]

The District Court in the case at bar correctly recognized (97 F.Supp. at 208) that the "off-season" is a period devoted to repair and maintenance work on a vast scale, designed to safeguard Waialua's capital investment as well as to insure the uninterrupted functioning of the mill during the harvest season. It is clear from its language that the exemption is premised upon the fact that processing operations are being conducted. When they are the exemption applies; but when, as here, they are not, then the exemption is not applicable. In the circumstances of the case at bar the exemption applies only during such time as the employer is engaged in processing. When the mill is shut down, the exemption does not apply.

Congressional purpose, as expressed in the Act, plainly refutes the contention that activities which may be necessary to processing, as distinguished from processing activities *per se*, should likewise be held exempt. Elsewhere in the Act, Congress demonstrated that, where it desired to cover both a particular activity and some other activity necessary thereto, appropriate language was employed. Thus, Section 3(j) grants coverage to employees who produce goods for commerce, and also to employees whose activities are "*necessary*" to the production of goods for

[29]To the same effect, see *Hoaburg v. Independent Oil Mill Inc.*, 2 WH Cas. 655 (W.D. Tenn.), and *Abram v. San Joaquin Cotton Oil Co.*, 49 F.Supp. 393 (S.D. Cal.). Although both of these cases involved the "dormant season" in the processing of cottonseed, the principle is the same.

commerce. (See pp. 63-65, *infra*.) But in granting the sugar processing exemption to employers, *Congress confined it to the time during which, and the place where, the processing operations per se were taking place.* It would do violence to statutory purpose and language to exempt each and every employee, regardless of the nature of his work or the locale of its performance, merely because certain of his employer's other employees were sometimes engaged in processing. On such a theory, the provisions of this remedial Act could be construed away into virtual ineffectiveness.

IV.

THE VILLAGE MAINTENANCE EMPLOYEES ARE ENGAGED IN THE "PRODUCTION OF GOODS FOR COMMERCE" AND, SINCE THEY ARE NOT OTHERWISE EXEMPT, WERE CORRECTLY HELD BY THE DISTRICT COURT TO BE INCLUDED WITHIN THE COVERAGE OF THE ACT.

Some of the employees here involved spent a considerable portion of their time repairing and painting company houses, cleaning the plantation village, constructing and repairing plumbing installations in the company houses, and constructing and repairing the water and sewage systems servicing such houses. They also engaged in trimming shade trees located around the plantation houses, cutting firewood for use as fuel in the plantation houses, and painting the company gymnasiums and clubhouse.

The District Court held that such employees were engaged in the production of goods for commerce and,

since they fell within none of the exemptive provisions of the Act, were entitled to compensation at the statutory overtime rate for hours worked in excess of 40 in each workweek. The Court of Appeals held that these activities were "purely local in nature" and a "convenient adjunct to farming" (216 F.2d at 473), and therefore exempt from the coverage of the Act. It is submitted that the District Court was correct and that its judgment should be affirmed.

The record reveals that it was necessary for Waialua to furnish housing and community services to its production employees. The village is located upon Waialua's private lands and in isolation and insulation from the rest of the Territory. No other housing in adequate quantity, except that provided by Waialua, is available to the employees. Waialua had originally constructed these houses and established the village for the purpose of supplying necessary dwellings for a stable labor pool which it desired to be in close proximity to its operations. Obviously, what is once constructed must be maintained if the original purpose is not to be defeated. Thus, maintenance of village facilities and dwelling repairs are carried on by Waialua as an integral part of its operations, not as a matter of kindliness or convenience to its employees, more than 98 per cent of whom live in company houses.[30]

Many of the employees who performed work in connection with village facilities were also part of Waialua's

[30]Rental to outsiders is negligible and it is generally confined to tradespeople who operate commercial establishments in the village.

production work force, being attached to the various repair shops which service production machinery and equipment and also administration and office buildings.

Housing and community services originally represented part of the wage payment made to the employees in the form of perquisites. Abolition of this perquisite system in 1946 did not nullify either the original purpose of the housing, or the continued effectuation of that purpose. Indeed, at the very time the perquisite system was ended, Waialua expressly undertook a collective bargaining obligation to continue to furnish repairs and maintenance of housing and village community services (Def's. Ex. B), and expressed its intention of not making housing a profit-making venture.

Under such circumstances it is submitted that the maintenance and upkeep of the village facilities is the production of goods for interstate commerce. Section 3(j) of the Act read, at the time in suit, as follows:

> "'Produced' means produced, manufactured, mined, handled, *or in any other manner worked on* in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, *or in any other manner working on such goods, or in any process or occupation necessary to the production thereof*, in any State."[31]

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[31] Effective January 25, 1950, Congress amended Section 3(j) to read as follows:

> "'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling,

In *Kirschbaum v. Walling*, 316 U.S. 517, this Court considered whether employees who operated and maintained a building, in which space was rented to persons who produced goods for interstate commerce, came within the provisions of the Act. Relying principally upon the above italicized provisions of Section 3(j), this Court held such employees to be covered despite the contention that the maintenance of a building was "purely local in nature". (316 U.S. at 524.)

> "But the provisions of the Act expressly make its application dependent upon the character of the employees' activities. And, in any event, to the extent that his employees are 'engaged in commerce or in the production of goods for commerce,' the employer is himself so engaged. Nor can we find in the Act, as do the petitioners, any requirement that employees must themselves participate in the physical processes of the making of the goods before they can be regarded as engaged in their production. Such a construction erases the final clause of Section 3(j) which includes employees engaged 'in any process or occupation necessary to the production' and thereby does not limit the scope of the statute to the preceding

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transporting, or in any other manner working on such goods, or in any *closely related* process or occupation *directly essential* to the production thereof, in any State." [June 25, 1938, c. 676, §3(j), 52 Stat. 1061, October 26, 1949, c. 736, §3, 63 Stat. 911.]

By the amendment the phrase "closely related" was inserted before the words "process or occupation", and the words "directly essential" were substituted for the word "necessary".

We are not concerned here with this amendment because all of the work here involved was performed prior to its effective date. However, it is clear that the purpose of the amendment was more narrowly to confine the meaning of the word "produce" and undoubtedly was a Congressional reaction to this Court's decisions in *Kirschbaum v. Walling*, 316 U.S. 517, and *Borden Co. v. Borella*, 325 U.S. 679, *infra*.

clause which deals with employees 'in any other manner working on such goods' . . .

". . . In our judgment, the work of the employees in these cases had such a close and immediate tie to the processes of production for commerce, and was therefore so much an essential part of it, that the employees are to be regarded as engaged in an occupation 'necessary to the production of goods for commerce' . . .

"The suggestion that the Act, if applied to these employees, goes beyond the bounds of the commerce power is without merit." (316 U.S. at 524-526.)[32]

In *Borden Co. v. Borella,* 325 U.S. 679, this Court held that employees engaged in activities relating to the maintenance and operation of a building which was used substantially as the headquarters of a corporation engaged in interstate commerce, and in which the executive offices of the corporation were housed, were covered by the Act. In determining whether employees were "engaged . . . in the production of goods for commerce," the court said:

"As to the latter category of employees it is unnecessary that they directly participate in the actual process of producing goods inasmuch as Section 3(j) . . . provides that 'for the purpose of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed . . . in any process or occupation necessary

[32]In the subsequent case of *Brooklyn Savings Bank v. O'Neil,* 324 U.S. 697, it was not even questioned that a night watchman employed in a building, a substantial portion of which was devoted to the production of goods for commerce, was entitled to overtime compensation under the provisions of the Act (324 U.S. at 699-700).

to the production thereof, in any State.'" (325 U.S. at 682.)

The court noted that the only distinction between *Borella* and the earlier *Kirschbaum* case was

"... that here the employees work in a building where production of goods is administered, managed and controlled rather than carried on physically. We hold, however, that this distinction is without economic or statutory significance and that it cannot form the basis for concluding that the respondent employees are engaged in occupations unnecessary to the production of goods for commerce". (325 U.S. at 682-683.)

The court recognized that in an economic sense production includes all activities directed to creating or increasing goods and commodities, and is not limited to the physical labor involved in changing the form or the utility of a tangible article. Thus the administration, management and control of the physical processes is also a part of the productive process, and therefore a service such as building maintenance which is necessary to such administration, management and control, is also part of the production. It follows that employees engaged in such maintenance are engaged in an occupation necessary to production and thereby qualify for benefits under the Act.

"Petitioner's industrial organization is such that the operation and maintenance of a central office building is essential to the economy, efficiency and continuity of production." (325 U.S. at 684.)[33]

[33]In the subsequent case of *Schulte v. Gangi*, 328 U.S. 108, it was not even questioned that building maintenance employees in a building the occupants of which produced goods for interstate

So here, too, Waialua's organization is such that the operation and maintenance of the village facilities are essential to the economy, efficiency and continuity of its railroading and manufacturing operations.

Indeed, the court below had previously so construed the statute, relying upon this Court's decision in *Kirschbaum v. Walling, supra.* In *Consolidated Timber Co. v. Womack,* 132 F.2d 101 (CA 9), there was involved the status of employees working in two cook houses maintained and operated by a company engaged in the production of goods for interstate commerce. One of these cook houses was held by the trial court[34] to be "an adjunct to the production of goods and the employees therein are assisting in that process" (*Womack v. Consolidated Timber Co.,* 43 F.Supp. 625 at 632-633 [D. Ore.]), while the other was held exempt as a retail or service establishment under Section 13(a)(2) of the Act. The former holding was affirmed and the latter reversed, the Court of Appeals holding that the employees of both cook houses were covered by the Act.

> "Here the cook house was a 'necessary' part of the Company's production of goods for commerce. It was not operating with the intent or purpose of showing a profit to the owners from the sale of food or service, but to render a very necessary assistance to the business of the Company, which was the production of logs in interstate commerce. The cook house was not

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commerce, were covered by the Act (328 U.S. at 117, 118). See also *Martino v. Michigan Window Cleaning Co.,* 327 U.S. 173 (employees of employer engaged in window cleaning at plants producing goods for interstate commerce).

[34]Judge Fee, who wrote the opinion of the Court of Appeals in the instant case.

a separate or independent establishment; it was actually a *part* of the Company's facilities—a link in the chain—whereby it accomplished the purpose of its existence. Neither cook house was in competition with any private restaurant for there is no evidence of an effort to secure the patronage of the general public; the service was sold at cost to those whom the cook house was intended to serve; the loggers. The principal activity of the cook house definitely was not to furnish service to the consuming public, as such, but was to serve the employees of the Company." (132 F.2d at 107.)

This opinion of the court below was subsequently followed in *Hanson v. Lagerstrom*, 133 F.2d 120 (CA 8). There, as here, the employer argued that the maintenance of the cook house was not "indispensable" to its operation since other facilities were available. But the court said:

"The proximity of hotels at Little Falls and Big Falls, Minnesota, the presence of a highway running past the camp within 150 feet, and other roads kept open the year around, with many men owning cars of their own, are cited as indicating the nonessential character of the cook house. It is also said that the cost of production is the same whether the camp method is used or farmers and shackers are hired. But these suggestions are aside from the question. The fact that defendant might have employed other methods, thus avoiding the necessity of maintaining a cook house, is not important. We are here 'confronted with a condition and not a theory'. We must here confine our consideration to what was actually done and not to what might have been done.

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". . . the cook house was intended primarily for the benefit of defendant's logging employees and to increase his production operations. It is certainly not a typical retail establishment. It was owned by the defendant and operated by him in connection with his logging operations. When these operations cease the cook house with its accompanying service will disappear." (133 F.2d at 122-123.)[35]

The foregoing cases turn upon the fact that the work performed by the service employees is in itself part of the over-all effort for the production of goods for commerce. Supplying such service constitutes an activity covered by the Act where it has a close and immediate tie with the process of production. Although each case depends upon its own facts, the decisive elements were suggested in *Consolidated Timber Co. v. Womack, supra:*

"Was not the greater number of diners of the cook houses engaged in the production of goods for commerce? Were not the cook houses an integral part of an organization devoted to the production of goods for commerce? Does it not follow, reasonably and logically, that the greater part of the service rendered by the cook houses was in interstate commerce rather than in intrastate?" (132 F.2d at 107.)

As the court below recognized in another case, the term "produced" is broadly defined in the Act (*Culver v. Bell & Loffland, Inc.*, 146 F.2d 29, 32 [CA 9]) and this Court

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[35]To the same general effect are the following District Court decisions: *Ferguson v. Prophet Co.*, 6 W.H.Cas. 284 (S.D. Ind.) (employees engaged in preparing food at a plant cafeteria); *McComb v. Factory Stores Co.*, 81 F.Supp. 403 (N.D. Ohio) (employees of company operating canteen on premises of Republic Steel Corporation).

has said that the word "necessary", here employed in the Act, should not be applied in a manner that would give it an unwarranted rigidity; it is a word "to be harmonized with its context". (*Armour & Co. v. Wantock*, 323 U.S. 126, 129-130.) The issue in the *Wantock* case was whether a firefighting service was sufficiently related to the operation of a soap factory as to entitle the service employees coverage under the Act. This Court said:

> ". . . no hard and fast rule may be transposed from one industry to another to say what is necessary in 'the production of goods'. What is practically necessary to it will depend on its environment and position . . . What is required is a practical judgment as to whether the particular employer actually operates the work as part of an integrated effort for the production of goods." (323 U.S. at 130.)

The "practical judgment" of the District Court that the company's maintenance of Waialua Village in the case at bar was part of its effort for the production of goods which were shipped in interstate commerce was clearly correct and should be affirmed.

Waialua also contended below that if these village maintenance employees are held to be engaged in the production of goods for commerce, then they are automatically exempt either under the 13(a)(6) or the 7(c) exemption. This, of course, is not correct[38] and it is quite clear that under the authorities heretofore cited in our discussion of these two exemptions, these village maintenance employees can by no stretch of the imagination

[38]See n. 21, *supra*.

be held to be engaged in either agriculture or the processing of sugar cane.

V.

WHEN AN EMPLOYEE IN A GIVEN WORKWEEK PERFORMS SOME WORK EXEMPT UNDER SECTIONS 13(a)(6) OR 7(c) AND SOME NOT SO, OR OTHERWISE, EXEMPT, HE SHOULD RECEIVE THE OVERTIME BENEFITS OF THE ACT.

Some of the employees here performed, during parts of some of the workweeks involved, work which was exempt from the provisions of the Act as being either agricultural or processing, and during other parts of the same workweek performed work which was not exempt. The District Court held that when, in a given workweek, an employee was so employed, he was entitled to the benefits of the Act.[37] The Secretary of Labor supported this view of the District Court. The Court of Appeals said that this issue was "immaterial" because of its decision. (See *supra,* pp. 47-49, and n. 26.)

The views of the District Court are sustained, as it said, by "an imposing array of decisions". (97 F.Supp. at 232.)

In *Overnight Motor Transport Co. v. Missel,* 316 U.S. 572, this Court had before it the application of the overtime provisions of the Act to an employee "working irregular hours for a fixed weekly wage". (316 U.S. at

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[37]The District Court found: "As a general rule, the engagement by defendants [the employees] in non-exempt activities, in those workweeks where this is found to be the fact, was substantial; and even in those instances where such engagement was small in amount, it was regular and recurring." (97 F.Supp. at 232.)

573.) In determining what was the correct formula to be used in fixing the employee's hourly rate of pay for purposes of computing his overtime compensation, the court determined that the workweek of the employee was the unit to be utilized.

> "Neither the wage, the hour nor the overtime provisions of §§6 and 7 on their passage spoke specifically of any other method of paying wages except by hourly rate. But we have no doubt that pay by the week, to be reduced by some method of computation to hourly rates, was also covered by the act. It is likewise abundantly clear from the words of §7 that the unit of time under that section within which to distinguish regular from overtime is the week. 'No employer shall . . . employ any of his employees . . . (1) for a workweek longer than forty-four hours . . .' ". (316 U.S. at 579.)[38]

Since the provisions of Sections 13(a)(6) and 7(c) make no reference to a unit of time, it is reasonable to suppose that that unit is the one established in Sections 6 and 7(a) and that the "workweek" is the unit to be applied to the exempting sections as well as to the other sections of the Act. Indeed by referring back, as the exempting provisions do, to the more general sections, it is clear that the time unit specified in the general sections are incorporated into the exempting sections.

This appears to be the view of every court that has passed upon the section. *North Shore Corp. v. Barnett*, 143 F.2d 172, 175 (CA 5); *Anderson v. Manhattan Lighterage Corp.*, 148 F.2d 971 (CA 2), cert. den. 326 U.S. 722;

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[38]This view was followed in *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 88, 93.

Fleming v. Swift & Co., 41 F.Supp. 825, 832 (N.D. Ill.), aff'd. 131 F.2d 249 (CA 7); *Jordan v. Stark Bros. Nurseries & Orchids Co.*, 45 F.Supp. 769 (W.D. Ark.);[39] *Shain v. Armour & Co.*, 50 F.Supp. 907 (W.D.Ky.);[40] *Walling v. DeSoto Creamery & Produce Co.*, 51 F.Supp. 938 (D. Minn.);[41] *Walling v. Peacock Corp.*, 58 F.Supp. 880, 883 (E.D. Wis.); *McComb v. Puerto Rico Tobacco Marketing Co-Op Ass'n.*, 80 F.Supp. 953, 957 (D. P.R.), aff'd. 181 F.2d 697 (CA 1); *McComb v. Del Valle*, 80 F.Supp. 945 (D. P.R.); *Walling v. Bridgeman-Russell Co.*, 2 W.H. Cas. 785, 790 (D. Minn.); cf. *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 571-572; *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446; *Wabash Radio Corp. v. Walling*, 162 F.2d 391, 393 (CA 6).

And this was the view adopted by the Administrator at the outset:

> "Questions have been presented as to whether an employee who devotes part of his time to an activity described in this section and part of his time to a non-exempt operation is entitled to the benefit of the exemption. It is our opinion that in such case, the employee is not entitled to the exemption. Of course, if the employee is engaged in certain workweeks in *only* the exempt operation, he is entitled to the exemption during such workweeks." (1941 W.H. Man. at 328.)

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[39] ". . . defendant is liable for the minimum wage and overtime compensation for the weeks in which plaintiffs spent any of their time at such [non-exempt] labor . . ." (45 F.Supp. at 771-772.)

[40] "The workweek appears to be the accepted unit of measurement with respect to the services of each employee." (50 F.Supp. at 911.)

[41] "Engaging in both exempt and non-exempt operations in the same workweek renders the employee non-exempt for the entire week." (51 F.Supp. at 943.)

Indeed, no other view is tenable. It would be an utter emasculation of the statute to fractionalize an employee's time any further and would pose administrative problems which would be impossible of solution.

The particularity with which the exemptions provided for in Sections 13(a)(6) and 7(c) is stated indicates an intention not to broaden any further the exemptions thus granted. Such an extension of the exemptions beyond their clearly stated scope would contravene the principle well established under this Act that "Such specificity in stating exemptions strengthens the implication that employees not thus exempted . . . remain within the Act." *Powell v. United States Cartridge Co.*, 339 U.S. 497, 517. See also *Addison v. Holly Hill Co.*, 322 U.S. 607, 617: "Exemptions made in such detail preclude their enlargement by implication." In refusing to "extend an exemption to other than those plainly and unmistakably within its terms and spirit" (*Phillips Co. v. Walling*, 324 U.S. 490, 493), the courts have uniformly refused to interpret exemptions in such a manner as to exempt activities which Congress obviously did not intend to exclude from the scope of the Act.

Furthermore, since "any exemption from this humanitarian and remedial legislation must . . . be narrowly construed . . ." (*Phillips v. Walling*, 324 U.S. 490, 493), the exemption cannot be granted simply because an employee engages in some exempt work if he also engages in other work which Congress clearly intended to subject to the statutory standards. Any other interpretation would open the door wide to evasion of the Act's purpose to eliminate sub-standard labor conditions. It would result

in absorbing into the exemptions parts of industries and activities plainly covered by the Act, simply because the same employees or their employers happened to engage in several kinds of activities, some exempt and others non-exempt.

VI.

THERE IS A REAL CONTROVERSY BETWEEN THE PARTIES CONCERNING THE APPLICABILITY OF THE ACT TO THE EMPLOYEES HERE INVOLVED. THE CAUSE IS IN NO WISE COLLUSIVE AND IS RIPE FOR COMPLETE DETERMINATION BY THIS COURT AT THIS TIME.

Waialua construes the decision below as holding only that the action shoud be dismissed as collusive. However, the Court of Appeals specifically refused to dismiss the employees' counterclaim which it certainly would have done, had that been the extent of its holding. On the contrary, it ordered further proceedings on the counterclaim in accordance with its opinion. In its opinion it gave a full exposition of its views on the questions relating to commerce coverage and the agriculture exemption. Indeed, its order plainly rests upon its view that the company's whole enterprise is outside the scope of the Act because "agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in a constitutional sense" (216 F.2d at 476), and that in any event the agriculture exemption applied to all of Waialua's employees.

Thus, there is no point in remanding the case to the Court of Appeals, as is suggested by Waialua, since that court has already expressed itself fully on the merits.

Nor is there any point in sending the case back to the District Court to enter judgment in accordance with the views on the merits expressed by the Court of Appeals since, as we have seen, those views are erroneous. To refer the case back to the lower court again would serve no purpose except to prolong this litigation. This case has been tried twice now, and on the last trial the District Court made "meticulous and exact" findings of fact. There is no question but what the evidence supports those findings, and the only matters left for determination are questions of statutory construction upon which the Court of Appeals has clearly and unequivocally expressed itself—and has expressed itself in a manner which is contrary to the decisions of this Court and of other Courts of Appeals.

A. There is a real controversy between the parties concerning the liability of the employer to pay overtime compensation pursuant to the provisions of the Fair Labor Standards Act.

Although the employees will obtain all the relief to which they are entitled if the District Court's judgment on their counterclaim is affirmed here, they nonetheless are of the view that the Court of Appeals erred in ordering dismissal of Waialua's complaint for declaratory relief.

For that complaint, like the counterclaim, does present an actual and important controversy between the parties concerning Waialua's liability to pay to the employees here involved overtime compensation under the provisions of the Act. The controversy existed for many years before the suit was filed, and it exists today. Clearly, under such circumstances, the District Court had juris-

diction to render a declaratory judgment (28 U.S.C. 2201), and it was error for the Court of Appeals to reverse the District Court for an alleged abuse of discretion in entertaining the suit. *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227; *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U. S. 270; *Railway Mail Association v. Corsi*, 326 U.S. 88. Declaratory relief proceedings have been frequently utilized in cases involving the interpretation and application of the Fair Labor Standards Act (*Tennessee Coal etc. Co. v. Muscoda Local*, 321 U.S. 590; *Jewell Ridge Coal Corp. v. Local 6167*, 325 U.S. 161), and, so far as is known, this is the first time any court has suggested that this procedure is inapplicable to a controversy such as this.

However that may be, this Court need not reach the question since it can determine the merits of the controversy between the parties here by its review of the order of the Court of Appeals reversing the District Court's judgment on the counterclaim rendered in favor of the employees.[42]

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[42]The Court of Appeals' treatment of this aspec of the case is confusing. In its main opinion it recognized that under Section 16(b) of the Act, "each of these employees had an adequate remedy by action at law if any thought he was aggrieved." (216 F. 2d at 478.) It was precisely this remedy which the employees sought to utilize by filing their counterclaim.

However, in its opinion on rehearing, it "construes what is called the cross-complaint as a petition also for declaratory relief." (216 F.2d at 479.) This it obviously was not. It was a complaint for money to which the employees were entitled as overtime compensation, liquidated damages and attorneys' fees, all as provided for in Section 16(b) of the Act.

Despite the court's "construction" of the cross-complaint [counterclaim] as a petition for declaratory relief, that pleading was "left undismissed."

If the counterclaim were in fact a petition for declaratory relief, and if such a petition could not properly be entertained,

B. The case is not collusive.

In its original opinion the Court of Appeals adverted to the agreement on commerce coverage and to the "Stipulation" (R. 27), and suggested that because of these circumstances Waialua's petition had to be dismissed. In its opinion on rehearing, the Court of Appeals stated directly that "the entire cause was tainted by apparent collusion between the parties in an attempt to obtain an advisory opinion on constitutional questions". (216 F.2d at 479.) In this the court was in error.

The commerce agreement was entered into (1) since it is undisputed that the raw sugar produced by Waialua was shipped from Hawaii to the mainland and there refined and sold, and (2) since this Court has consistently held that the commerce power reaches the production of agricultural commodities destined for interstate shipment. *Santa Cruz Fruit Packing Co. v. N.L.R.B.*, 303 U.S. 453; *Mulford v. Smith*, 307 U.S. 38; *United States v. Wrightwood Dairy Co.*, 315 U.S. 110; *Wickard v. Filburn*, 317 U.S. 111; *Mandeville Farms v. Sugar Co.*, 334 U.S. 219; *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755.

Such an agreement did not render the suit collusive. (cf. *Cotting v. Goddard*, 183 U.S. 79.)[43] Still to be tried

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then the Court of Appeals should have dismissed it also. The fact that it did not, demonstrates that irrespective of the court's "construction," it recognized that in fact the counterclaim was an action at law to recover overtime compensation, liquidated damages, and attorneys' fees.

[43] "There is no force in the suggestion that the officers of the corporation agreed with the stockholders as to the unconstitutionality of the statute, and that therefore the suit is a collusive one. That was the condition in *Dodge v. Woolsey*, 18 How. 331,

out were the issues of statutory construction about which the parties were in sharp disagreement.

It was not suggested by the Court of Appeals that the stipulation as to facts does not truly reflect the facts about Waialua's operations and the parts played therein by the employees here. Such a stipulation does not render a suit collusive, but on the contrary it is looked upon with favor since it expedites litigation and permits a court to get quickly to the heart of the issues between the parties.[44]

Stipulations as to facts in cases arising under the Fair Labor Standards Act have long been received as appropriate (*Roland Electric Co. v. Walling*, 326 U.S. 657, 661-662; *Boutell v. Walling*, 327 U.S. 463, 465, 468; *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 725; *Puerto Rico Tobacco Marketing Corp. v. McComb*, 181 F.2d 697, 698 [CA 1]), and "concessions" respecting commerce coverage (*Kirschbaum v. Walling*, 316 U.S. 517, 519; *149 Madison Avenue Corp. v. Asseta*, 331 U.S. 199, 201;

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and it only emphasizes the fact that the officers were refusing to protect the interests of the stockholders, not wantonly, it is true, but from prudential reasons." (183 U.S. at 113.)

[44]Chief Justice Taney said many years ago:

". . . It sometimes happens that for the purpose of obtaining a decision of the controversy, with[out] incurring needless expense and trouble they [the parties] agree to conduct the suit in an amicable manner, that is to say, that they will not embarrass each other with unnecessary forms or technicalities, and will mutually admit facts which they know to be true, and without requiring proof, and will bring the point in dispute before the court for decision, without subjecting each other to unnecessary expense or delay . . . Such amicable actions, so far from being objects of censure, are always approved and encouraged, because they facilitate greatly the administration of justice between the parties." (*Lord v. Veazie*, 8 How. 251, 255.)

Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755, 758), and "agreements" respecting the scope of the agriculture exemption (*Bowie v. Gonzalez*, 117 F.2d 11, 17 [CA 1]) have been accepted without question.[45]

Although the parties agreed upon the obvious fact that the production of the raw sugar was the production of goods for interstate commerce,[46] and further stipulated to the *facts* concerning Waialua's operations and the employees' role therein, they differed sharply respecting the applicability to those facts of the agriculture and processing exemption; and they differed respecting liability to pay overtime compensation in a workweek in which an employee did some exempt and some non-exempt work. These differences, which went to the heart of the case, were sharply contested in the pleadings, arguments and briefs in both courts below. An examination of the petition for certiorari in No. 357 and the response thereto demonstrates that those differences exist today, and it

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[45]When the author of the opinion below sat as a District Judge he remarked in a case tried before him under this statute:

> "The pre-trial order was drafted jointly by the attorneys for the respective parties and is here set out in full as an excellent example of such an order. The agreed facts are concisely stated and the issues are clear cut for decision, and documents necessary for the determination were marked and listed therein. Such an outstanding consolidated pleading requires special commendation of the draughtsmen." (*Womack v. Consolidated Timber Co.*, 43 F.Supp. 625, 626-627 [D. Ore.].)

See also the opinion of the Court of Appeals in the same case stating, without any suggestion of criticism, that "the facts were stipulated to prior to trial". (*Consolidated Timber Co. v. Womack*, 132 F.2d 101, 104 [CA 9].)

[46]Despite the general agreement as to commerce coverage, the parties differed as to whether or not the employees in and around Waialua Village were engaged in the production of goods for commerce.

is to resolve the conflict between the parties on those issues that the employees sought and obtained review in this Court. Thus it is seen that the suit is not tainted with collusion.

Solely because the parties have sought to eliminate from the suit all issues about which they reasonably could have no controversy and have sought to expedite and facilitate the judicial process by stipulating as to those facts about which there could be no dispute, they ought not to be criticized. But in any case, they have presented a factual record to the courts below and to this Court upon which a determination of their conflicting positions, respecting the construction of the statute and its application to the facts at hand, can be readily made.

C. The entire controversy is ripe for disposition by this Court.

In its Brief in Opposition in No. 357, Waialua argued that the employee's petition improperly presented questions which were not passed upon by the Court of Appeals and urged this Court to limit the writ to "the issue of 'case or controversy' underlying the judgment below, so that review by this Court on the respective petitions of the parties (in Nos. 357 and 358) may eventuate in a directive to the Court of Appeals to resolve the controversy between the parties on the merits."[47]

Despite this Court's unquestioned power to limit the issues it will consider on review (*Protective Committee v. Securities Exchange Commission*, 346 U.S. 810; *Part-*

[47]Brief in Opposition, No. 357, pp. 9-10.

mar v. Paramount Pictures Corp., 345 U.S. 963; *Bridges v. United States*, 345 U.S. 904, and 345 U.S. 920; *Dennis v. United States*, 340 U.S. 863, and 341 U.S. 494, 495-496, 518), this Court refused to impose any such limitation in its order granting certiorari in these cases (348 U.S. 870). On the contrary, in consolidating the cases, and particularly in inviting the Solicitor General to present the views of the Secretary of Labor, this Court made it clear that it considered the merits of the controversy to be before it. It is unlikely that the Secretary's views would have been invited had this Court conceived that it was not going to decide those questions of statutory construction here presented which have such an important bearing upon the administration of the Fair Labor Standards Act.

Perhaps we need say no more on this point, but we are constrained to observe, in conclusion of it, that an examination of the opinion of the Court of Appeals quickly dispels the notion that that court did not pass upon the merits of the cause. Its repeated references to the statutory provisions involved and its citation of cases dealing with the scope of the agriculture exemption demonstrate that it considered and decided the important questions of statutory construction that are presented by the employees in their petition for the writ in No. 357. The oral argument and the briefs in the Court of Appeals, both those submitted by the parties and that submitted by the Secretary of Labor *amicus curiae*, dealt fully and extensively with those questions. The factual record was full and complete and the Court of Appeals expressed its views on these questions. Finally, the briefs

already filed here—and those we expect yet to be filed—will also deal exhaustively with these questions.[48]

CONCLUSION.

As in other cases arising under this Act, where an employer seeks to have the line drawn differently than the Administrator has done, the determination must in the last analysis depend "upon the larger considerations of national policy" which govern judicial construction. (*Kirschbaum v. Walling*, 316 U.S. 517, 523.)

This Court has noted that:

> "The Fair Labor Standards Act was designed 'to extend the frontiers of social progress' by 'securing

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[48]For all these reasons, the cases referred to by Waialua (Brief in Opposition, No. 357, pp. 8-10) are clearly not in point. For example:

United States v. Ballard, 322 U.S. 78, 88:

> "The Circuit Court of Appeals did not reach those questions . . . [Those] questions were not fully presented to this court either in the briefs or oral argument. In view of these circumstances we deem it more appropriate to remand the cause to the Circuit Court of Appeals so that it may pass upon the questions reserved . . . If any questions of importance survive and are presented here, we will then have the benefit of the views of the Circuit Court of Appeals."

Aetna Casualty & Surety Co. v. Flowers, 330 U.S. 464, 468:

> "But those questions were not passed upon by that Court [of Appeals] nor adequately presented here."

Land v. Dollar, 330 U.S. 731, 739:

> "The questions have not been briefed or argued. Moreover, the present record may not present all the facts necessary for disposition of the motions."

NLRB v. Pittsburgh Steamship Co., 337 U.S. 656, 661:

> "The applicability and possible effect of either or both of these statutes apparently were not dealt with by the Court of Appeals, which neither discussed the statutes nor cited cases concerning them; . . ."

> to all our able bodied men and women a fair day's pay for a fair day's work.' Message of the President to Congress, May 24, 1934." (*Phillips Co. v. Walling,* 324 U.S. 490, 493.)

and that

> "The Fair Labor Standards Act . . . is a part of the social legislation of the 1930's of the same general character as the National Labor Relations Act . . . and the Social Security Act . . ." (*Rutherford Food Corp. v. McComb,* 331 U.S. 722, 723.)

Turning from these general observations to the specific method conceived by Congress to achieve its objectives, this Court has declared that it was the intent of the legislation

> ". . . to exclude from interstate commerce goods produced for the commerce and to prevent their production for interstate commerce under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being; and to prevent the use of interstate commerce as the means of competition in the distribution of goods so produced, and as the means of spreading and perpetuating such substandard labor conditions among the workers of the several states." (*United States v. Darby,* 312 U.S. 100, 109-110.[49]

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[49]"The motive and purpose of the present regulation are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and other states from and to which the commerce flows." (*United States v. Darby,* 312 U.S. 100, 115.)

"The Fair Labor Standards Act was passed by Congress to lessen, so far as seemed then practicable, the distribution in commerce of goods produced under sub-normal labor conditions. An

As this Court has said, the purpose of the Congress was not merely to regulate interstate commmerce as such, but also "to eliminate, as rapidly as practicable, substandard labor conditions throughout the nation. It sought to raise living standards without substantially curtailing employment or earning power." (*Powell v. United States Cartridge Co.*, 339 U.S. 497, 510.)

Upon these premises, this Court has solved a multitude of problems that have arisen under the Act. Thus, in *Roland Electric Co. v. Walling*, 326 U.S. 657, the Court, recognizing that the Act sought to eliminate substandard labor conditions throughout the country, said:

> "This purpose will fail of realization unless the Act has sufficiently broad coverage to eliminate in large measure from interstate commerce the competitive advantage accruing from savings in costs based upon substandard labor conditions. Otherwise the Act will be ineffective and will penalize those who practice fair labor standards as against those who do not." (326 U.S. at 669-670.)

For this reason, and not merely because of the existence of any mechanical rule of statutory construction, as the Court of Appeals seemed to think,[30] this Court has confined the exemptions to their narrowest possible scope consistent with the language of the statute.

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effort to eliminate low wages and long hours was the method chosen to free commerce from the interference arising from production of goods under conditions that were detrimental to the health and well-being of workers. It was sought to accomplish this purpose by the minimum pay and maximum hours provisions . . ." (*Rutherford Food Corp. v. McComb*, 331 U.S. 722, 727.)

[30] 216 F.2d at 475.

> "To fail to cover in this Act the multitude of employees who are engaged in establishments like that of the petitioner and which supply the materials and services currently needed for the maintenance of productive machinery used by those who produce goods for interstate commerce would take the heart out of this Act. Savings resulting from substandard labor conditions would be reflected directly into competitive costs. This would weaken the governmental mechanism for sustaining the minimum standard of living necessary for the health, efficiency and general well-being of workers referred to as the purpose of the Act." (*Roland Electric Co. v. Walling*, 326 U.S. 657, 668.)[51]

From the time it was first enacted up to the very moment that this brief is being written,[52] the strengthening of the Act has been favored as important national policy. During the administration of three different Presidents and in the platform and program of both major parties, the broadening of the coverage of the Act has constantly been urged.

The Court of Appeals, manifestly disagreeing with the public policy on which the Act rests,[53] gave it a construc-

---

[51] "Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, giving due regard to the plain meaning of the statutory language and the intent of Congress. To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people." (*Phillips v. Walling*, 324 U.S. 490, 493.)

[52] See the State of the Union Message, delivered by President Eisenhower to the Joint Session of the 84th Congress, January 6, 1955, *New York Times*, January 7, 1955, pp. 10, 11.

[53] On two occasions the Court of Appeals called the Act "drastic" (216 F.2d at 468, 475), and on another occasion it referred to the machinery set up under it as "federal bureaucratic control" (216 F.2d at 478).

tion which defeats that purpose, takes the heart out of the Act, and would give to Hawaiian sugar producers an unfair advantage over their competitors from the mainland, Puerto Rico, and elsewhere.

The District Court, on the other hand, after making "meticulous and exact findings", applied the Act to the employees here in a manner thoroughly consistent with this Court's decisions.

For the foregoing reasons, the judgment of the Court of Appeals should be reversed and the judgment of the District Court should be affirmed.

Dated, San Francisco, California,
January, 1955.

Respectfully submitted,

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Of Counsel.

(Appendix Follows.)

Appendix.

Appendix

When each of the employees here involved performed the following types of work, the District Court held that he or she was entitled to overtime compensation:

Ciraco Maneja (R. 191-193):

> As a mechanic and machinist working in the tractor repair shop, he made repairs and performed general overhauling work on tractors, tractor parts and various other machines and implements. He also repaired cane cars in the mill yard.

Cornelio Asuncion (R. 193-135):

> Repaired portable track in repair station and fields, repaired tractors, hauled cane cars, worked on pile-up of cane cars in locomotive wreck, dislodged rails.

Tsuruo Hayashi (R. 196-197):

> Repaired caneloading machines and parts, cleaned caneloading machine repair shop.

Koichi Okouchi (R. 198-201):

> Repaired track in section repair station, tractors at tractor repair shop, portable pump used for drainage and irrigation ditches, tractor auxiliary implements at shop, portable track at section repair shop. Leveled track lines; laid, or removed to storage at mill yard, temporary main line railroad; dislodged for removal to storage rails placed on plantation by U.S. Army as lessee of part of premises during the war.

Tadao Watanabe (R. 201-204):

Repaired tractors at shop, tractor auxiliary implements at shop, grader at shop, caneloading machines at shop, tractor repair shop equipment.

Peter Holmberg (R. 205-206):

As a locomotive engineer, he hauled cane cars and portable track rail cars; he operated locomotive to switch broken cane cars to repair station in mill yard; he repaired locomotives and main line of plantation railroad.

Barney Faria (R. 206-208):

Repaired locomotives in roundhouse, parts for crushing plant in machine shop, plumbing shop tools and implements in machine shop; made parts for new cane seed planting machine in machine shop.

Hatsusuke Sera (R. 208-210):

As a section hand on mainline railroad, he repaired railroad tracks of mainline railroad by replacing worn equipment such as rails, spikes and ties; cleaned and lubricated switches on mainline railroad; maintained rights-of-way of mainline railroad by w[illegible]ding and cutting trees; graded and leveled uneven sections of trackway on mainline railroad; installed and removed field switches for connecting mainline railroad to cane field portable track lines; assisted in clearing train wrecks and repairing derailed locomotives and cars; loaded railroad ties on freight cars in mill yard; directed traffic as flagman

at railroad crossing of mainline railroad; otherwise repaired and maintained mainline railroad.

Takumi Okouchi (R. 210-212):

As a flagman and railroad maintenance worker, he weeded along mainline railroad; laid temporary mainline railroad on plantation roadway adjoining a harvesting field; directed traffic at intersections of public highways and mainline railroad in connection with crossing of public highways by plantation locomotives and trains; cleared debris and fallen cane from intersections and collected same into piles at roadside; scraped and removed dirt accumulated on intersections; did maintenance work on rights-of-way of railroad, such as weeding and cutting trees. Also he repaired cane processing equipment in mill

Masaiki Oato (R. 212-215):

Performed variety of electrical repair work in electric shop, hospital, on transmission lines, in dwellings located in plantation village and occupied by Waialua's employees, in power plant, at main administration office, at tractor repair shop, on mill equipment, in mill yard, service station, fire room equipment, on electric supply system, at church off plantation, at herbicide station in mill yard, on pumps, on electric shop equipment, at Waialua Lions Club off plantation, on irrigation booster pump, at clubhouse and at church in plantation village, at independent retail store in plantation village. He also worked as auxiliary tender in power house and as power plant op-

erator in power plant. He also cleaned electric shop, repaired machine shop equipment, installed pump at mill and installed mill equipment.

Dionicio Carrit (R. 216-218):

Handled and shoveled bagasse; regulated flow of bagasse to furnaces; operated fuel oil pumps and burner; started and stopped fireroom machinery; watched boiler water levels; cleaned and made repairs to fireroom equipment during weekend shutdown.

Seraphine Robello (R. 218-220):

Started, operated and stopped generating units; operated switchboard equipment; kept a log of power house operations; made repairs and adjustments to all power plant equipment; supervised equipment which showed the interchange of power between the plantation and the Hawaiian Electric power systems; started, stopped, serviced and repaired air compressors; cleaned and repaired power plant equipment.

Damaso Claunan (R. 220-223):

As a mechanic, he repaired trucks and automobiles in garage; occasionally repaired concrete products plant equipment, mill equipment, air compressors, equipment used in maintaining domestic sewer and domestic water supply system in plantation village, garage equipment.

Fumio Sunahara (R. 223-226):

As a welder, he repaired the following types of equipment: stable equipment, cane cars, locomotives, mill equipment, equipment for garage, equipment at bathhouse, rolling stock, machine used to plant cane seed, service station equipment, fireroom equipment, hand truck, warehouse building, machine shop equipment, irrigation flume forms, laboratory equipment, herbicide station equipment, stoneboat sled, tractors, electric transmission lines, plows, dwellings, power plant equipment, electrical supply system maintained at plantation village for servicing dwellings, hospital equipment, equipment used for maintenance of plantation roads, equipment of plantation irrigation system, fire protection equipment, portable track, trucks; he also made improvements for dwellings of Waialua's employees.

Toshio Tanaka (R. 227-231):

As a machinist, he machined parts for mill equipment, caneloading machines, trucks, tractors, tractor auxiliary implements, pump equipment, irrigation equipment, hospital equipment, locomotives, mill pump equipment, fireroom equipment, electric shop equipment, welding shop equipment, roundhouse equipment, concrete mixer, portable track, power plant equipment, garage equipment, tractor repair shop equipment, fire protection equipment, herbicide hand spraying equipment, cane cars, laboratory equipment, automobiles used in cane field supervision, equipment for parks and playgrounds; equipment

used to survey plantation cane fields. He also improved dwellings in plantation village.

Masaru Ezawa (R. 231-235):

As a mechanic in the tractor repair shop, he repaired tractors, tractor auxiliary implements, concrete mixer, grader, haul cane equipment. trucks, air compressors.

Domingo Guigui (R. 235-239):

As a truck driver, he hauled labor, material and equipment for cane cleaning plant, stable, cane field operations, warehousing of fertilizer used in cane field operations, plantation villages, plantation retail store, clubhouse, bathhouse, boiling house, firewood operations, repair of village roads, fireroom, playground, tractors, irrigation system, crushing plant, macadamia nut grove, pumps, field roads. He also stood by at garage as fire truck operator; piled firewood; cleaned room at mill yard used to store tools for cane field operations; repaired plantation village roads; towed trucks engaged in hauling fertilizer for use in cane fields from fields to garage for repairs.

Alfred Reyher (R. 239-243):

As a mechanic attached to the caneloading machine repair shop, he repaired caneloading machines in fields and shop, repaired caneloading buckets, repaired field drainage pipeline in cane fields. He cleaned the shop; hauled labor; made new type cane

grab in shop; and removed acetylene generator to be junked from garage.

Hirosaku Takata (R. 243-248):

As a blacksmith, he repaired equipment used in cane field operations, tractor auxiliary implements, cane cars, caneloading machines, mill equipment, trucks, grader, electric shop equipment, portable track rail cars, tractors, locomotives, portable track, plantation village sewerage system equipment, fireroom equipment, cane grab, hospital equipment, concrete products plant equipment, service station equipment, blacksmith shop equipment, power plant equipment, machine shop equipment, and pump equipment. He also reconstructed railroad rock cars into portable track railcars and shod horses and mules at stable.

Antone Vierra (R. 248-256):

As a truck driver, he hauled labor, material and equipment for cane field operations, stable, irrigation system, plantation railroad, fireroom, concrete products plant, plantation village, firewood operations, supplies, warehouses, stones from cleaning plant, off plantation, for building stone wall, crushed rock to plantation village for repair of village roads, gymnasium, roundhouse, macadamia nut seedlings from Honolulu, herbicides from off plantation to plantation warehouse, macadamia nut grove, crushed rock from off plantation to concrete products plant, crushed rock from off plantation to plantation village for repair of sewer system, field roads, tinsmith

shop repairing irrigation scoops, storage of plantation railroad ties and equipment, clubhouse, crushed rock from off plantation to cane fields for repair of field roads, crushed rock from off plantation to plantation village for repair of village sidewalks. He also did maintenance work in mill yard.

Jiro Sakai (R. 256-257):

Painted dwellings in plantation village, clubhouse, housing department office.

Yukishige Tsutsui (R. 257-258):

Produced concrete flumes, pipes and other concrete products, concrete blocks used as foundations for dwellings of Waialua's employees in plantation village, concrete products used as equipment in such dwellings, square blocks used as sidewalks in plantation village. He also worked at warehouse as helper.

Toshio Kashiwabara (R. 259-263):

As a plumber, he repaired plumbing facilities at dwellings, playground, gymnasium, hospital, clubhouse, Waialua's retail store, beach home near plantation owner of said home being charged for such repair work, main administration office, barber shop in plantation in building leased by Waialua, carpenter shop, bathhouse, slaughterhouse, Waialua Dairy, tractor repair shop, garage, mill, church in plantation village, laboratory; he also repaired plumbing shop equipment, water tank of locomotives, fire hydrant, water line of City and County of Honolulu, sewage

system equipment and water supply system in plantation village, water supply system in plantation cemetery, pipe line for pumps, and service equipment on trucks at plumbing shop.

Edwin Mori (R. 264-265):

As a carpenter, he worked at the carpenter shop repairing cane cars, portable track rail cars; also at the carpenter shop he reconstructed railroad rock cars into portable track rail cars, cut pipes for use in irrigation, cleaned carpenter shop, constructed forms for cesspools for dwellings. He also repaired dwellings, constructed new housing department office, and drew plans for dwellings and for wash houses for dwellings.

Genjiro Hironaka (R. 266-273):

As a carpenter at the carpenter shop, he repaired tools used in cane field operations, repaired mill equipment, carpenter shop tools, locomotives and parts, made and repaired cane car equipment, made equipment for caneloading machine repair shop, made improvements for dwellings, did carpentry work for use at Christmas program in clubhouse, constructed shelter houses for flagmen, repaired trailers, constructed coffins, repaired cane cars, power plant equipment, trucks, tools used in cutting fire wood, fireroom equipment, laboratory equipment, educated children in carpentry work in connection with high school cooperative worker program, repaired welding shop equipment, concrete products

plant tools and equipment, irrigation equipment, electric shop equipment, main administratior office equipment, did carpentry work for warehouse, repaired tools used in maintenance of plantation villages, pump station equipment, fences for use along plantation cane fields, stable equipment, garage equipment, made haul cane warning signs, repaired caneloading machines, did carpentry work for new housing department office, made main administration office equipment, repaired paint shop equipment, made equipment used in constructing part of sewage system for plantation village, repaired roundhouse equipment, equipment used in maintenance of plantation village, made irrigation equipment, repaired plumbing shop tools, did carpentry work for clubhouse.

Antone Robello (R. 273-276):

Serviced caneloading machines, tractors, air compressors, concrete mixer, automobiles, trucks, concrete products plant equipment, locomotives, herbicide sprayer, fire equipment trailer, garage equipment, equipment at mountain home on plantation maintained for recreational use of Waialua's employees. Also operated school bus to transport children of Waialua's employees to and from school.

Yoshiji Yamada (R. 277-278):

As a carpenter, he repaired dwellings, irrigation equipment, machinery and equipment used in cane

processing operations, water tank used to supply water to locomotives, pump equipment, sewer system in plantation village; constructed new housing department office; drove pickup truck to haul materials for repairing dwellings.

Roque Crisostomo (R. 279-283):

Operated grader on field roads, cane fields, playground area, village roads, banks for disposal area, around plantation buildings and yard area, grounds of independent retail service station and garage in plantation village, grounds around gymnasium. Repaired tractors, grader, sewer system, irrigation system. Hauled sand for repair of field and plantation village roads, benches and chairs from gymnasium, fertilizer, lumber, crushed rock and supplies and equipment for repair of irrigation system, rubbish, furniture, firewood.

Moses Fernandez (R. 284):

As village cleaner, he cleaned roads in plantation villages, parks, playground, cemetery, cleaned gymnasium, yards of Waialua's employees in plantation village, and weeded at macadamia nut grove.

Louis Pacheco (R. 285-286):

As a laboratory technician he collected daily samples of cane leaves for analysis; performed clerical activities pertaining to assembly and correlation of laboratory information.

Margaret Fujiwara (R. 286-288):

During grinding season, as a laboratory technician she made analyses of sugar juices and syrups, determined hydrogen ion, density and salt concentrates of water used in mill and for locomotives, checked pump water for irrigation and domestic purposes. As a clerk during off-season she typed reports and did clerical work for laboratory; analyzed cane leaf sheaths. She recharged fire extinguishers.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1954

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vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Respondent.

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vs.

CIRACO MANEJA, et al.,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.

REPLY BRIEF FOR PETITIONERS CIRACO MANEJA, ET AL.

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I.

THE AGRICULTURE EXEMPTION.

Waialua's entire argument on this point is based upon the premise that Waialua is a "farmer", and that therefore *none* of its employees is entitled to the benefits of the Act. But both the premise and the conclusion drawn from it are erroneous: Waialua is not solely a "farmer"; and even if it were, that fact alone would not grant it an exemption for *all* of its employees.

1. Waialua is not solely a farmer.

While the statutory definition of agriculture (Section 3[f])[1] refers to "farming in all its branches . . . and any practices . . . performed by a farmer . . .", it nowhere defines or states what is a farmer; except insofar as that may be inferred from the language used to describe "farming", i.e., "the cultivation and tillage of the soil . . . the production, cultivation and harvesting of any agricultural . . . commodities . . ." Thus, the statute uses the word "farming" in its generally accepted sense: raising agricultural commodities from the soil. And it may be presumed that the word "farmer" was used in the same sense: one who engages in farming, that is, in raising agricultural commodities from the soil.[2] To the

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[1]The statute, of course, is the Fair Labor Standards Act of 1938. (52 Stat. 1060; 29 USC 201, *et seq.*)

[2]A farmer is defined as:

"A cultivator of ground . . .; one who tills the soil; one who conducts or manages a farm; an agriculturist; a husbandman." (***Webster's New International Dictionary***) or

"One who follows the occupation of farming; one who manages a farm of any kind; an agriculturist; as the *farmer* raises wheat to sell." (***Funk & Wagnall's New Standard Dictionary.***)

Cf. *Addison v. Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 618:

extent that Waialua engages in such activities, it conducts farming and to the extent that certain of its employees are actually engaged in agricultural work, the District Court granted the agriculture exemption.[3]

But to the extent that Waialua engages in other functions and activities, it is not a farmer, and workmen engaged in these other functions are not farmhands. Normally, a farmer does not operate a railroad, normally a farmer does not operate carpenter shops, welding shops, electric shops, extensive machine shops, or roundhouses. Normally a farmer does not employ fulltime machinists, locomotive engineers, carpenters, railroad section hands, painters, plumbers, chemists, and the like. To the extent that Waialua engages in these activities it is not a farmer; to that extent it has left the agricultural field and has become a processor or a railroader or a manufacturer.

In the brief which the American Farm Bureau Federation proposes to file herein as amicus curiae, the characteristics of farming (as contrasted with processing, manufacturing, maintenance or railroading) are set out with commendable clarity:

> ". . . farm operations, unlike industrial operations, cannot be regulated by the clock. The coming and going of the seasons do not await the pleasure of man. Sunshine, rain, humidity and warmth are not yet subject to man's control. The time to plant and

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"After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

[3]Waialua concedes (Brief for Waialua, p. 38) that the District Court exempted from the coverage of the Act the "field activities": preparation of the soil for planting, planting, ratooning, cultivating, fertilizing, irrigating and harvesting.

> the time to harvest are determined by the whims of nature. Calves, lambs and pigs are born at all hours of the day and night. Livestock must be fed and cows must be milked each day including Saturdays and Sundays. Plant and animal growth continues around the clock. Successful farming demands long hours of labor on certain days and few hours of labor on others. Frost, heat, humidity, rainfall, relative day and night temperatures, presence or absence of pests or the incidence of disease or illness are the practical factors governing these demands. No limitation or regulation of the farmer's hours is possible in an efficient farming operation." (Brief for American Farm Bureau Federation as Amicus Curiae, pp. 12-13.)

This points up the underlying reason why the statutory exemption is applicable to employees engaged in "field activities", while it does not, and should not, exempt those who operate a mill, shop or railroad.

Indeed, since the ultimate end of all of Waialua's activities is the sale of a manufactured product—sugar refined at the cooperatively owned plant in California—it seems more reasonable, if Waialua insists that an arbitrary classification of its status be made, to say that Waialua is a manufacturer whose agricultural activities are merely preliminary to the major industrial processes which follow. This result would appear to be more realistic than the proposition that the whole complex of activities shown by the record here may be classified *solely* as farming.

But this Court is not required to choose either of these two extremes. For it has long recognized that viewed

realistically and, at least for the purposes of this statute, businesses may take on more than one "characteristic". (*Phillips v. Walling*, 324 U.S. 490.) In such a case the exemption's applicability depends upon the nature of the work performed by the employee involved. Here the District Court's finding that Waialua's operations took on characteristics other than those of a farmer was palpably correct. And the point chosen by the District Court to separate the agriculturally exempt from the non-exempt employment was neither unreasonable, arbitrary, nor capricious: the point at which the "field work" was completed by the delivery of the loaded cane cars to the fixed railroad track,[4] from which point on the product was no longer handled by field hands, but rather by skilled railroaders and thereafter by trained factory technicians.

This Court, in *Addison v. Holly Hill Fruit Products, Inc.*, 322 U.S. 607, 611, quoted with approval from Mr. Justice Holmes' dissenting opinion in *Louisville Gas &*

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[4]Waialua complains (Brief for Waialua, p. 44, n. 27) that the District Court's finding that the company distinguished beween harvesting and mainline transportation is "misleading" because, it says, Waialua also distinuishes between harvesting and field transportation. But certainly Waialua cannot complain because the court drew the line where it did, giving Waialua the benefit of the greater rather than the lesser exemption. It must never be forgotten that, as we have already pointed out, the District Court did grant Waialua a very substantial exemption for its farming operations: it excluded from the coverage of the Act those employees actually engaged in agricultural activities.

In connection with social security withholding taxes (49 Stat. 620; 42 USC 301, et seq.), Waialua made deductions for substantially all its employees save the field hands who were considered to be "agricultural labor" within the meaning of Section 210(f) of that Act (42 USC 410[f].) And the point of demarcation which the company itself chose was the *point at which the cane was delivered to and loaded* on the mainline railroad cars. (R. 624-626.)

Electric Co. v. Coleman, 277 U.S. 32, 41, language which is clearly pertinent here:

> "Looked at by itself without regard to the necessity behind it, the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision . . . must be accepted unless we can say that it is very wide of any reasonable mark."

2. Even if Waialua were solely a "farmer", that fact alone would not make all of its employees exempt.

The exemption which Waialua here claims (Section 13[a][6]) does not depend upon how *an employer's* operation may be characterized, but rather applies only to "*any employee* engaged in agriculture". Thus, no matter how broad is the definition of agriculture, and no matter how vehemently Waialua asserts that *it* is a farmer, the question yet remains: Are these 40 petitioners engaged in agriculture? Is a man whose sole occupation is the driving of a railroad locomotive engaged in agriculture; or one who does nothing but repair locomotives, trucks, or tractors; or one who does nothing but electrical repair work or welding or machine shop work or carpentering? Viewed in this light, the significance of this Court's language in *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 761, becomes plain:

> "Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory

produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. In this way functions which are necessary to the total economic process of supplying an agricultural product, become in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it. Thus, the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity. The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. But the maintenance man in a power plant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by the farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture."

The District Court quite correctly found that in operating the mill, railroad and machine shops, Waialua's employees engaged in specialized, separate and independent productive functions which were not a part of the agricultural operation. Certainly, if the railroad, or the shops had been operated under a separate ownership from the agricultural fields,[5] there would be no question but what

[5]Instead of under separate departments—which was admittedly the case here (R 381-390.)

the employees here involved would be entitled to the benefits of the statute. Thus in one aspect, this case really presents the question of whether unitary ownership should deprive the employees of those benefits.

To accept Waialua's contentions here would lead to some startling results. It would mean that the more the "independent productive activities" came under single ownership with the farm, the fewer would be the workers covered by the statute. It would mean that in Puerto Rico, for example,[6] where railroad and maintenance workers are now covered, they would lose that coverage if the "centrale" were to buy up the independent "colonos". This is literally to stand the Act on its head and to make it topsy-turvy. It is to impose the added costs of overtime compensation on small economic units, while relieving their larger and more powerful competitors from such costs.

In other words, Waialua is arguing that the Act applies to railroad and maintenance workers only where those workers are employed by independent employers who sell their services to a "farmer". But if the "farmer" is large enough to buy up these independent operations and put them under one ownership then, according to Waialua, the workers who had theretofore enjoyed the benefits of the statute would automatically lose them. As we have seen,[7] this contention was made and

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[6]See the discussion of the land ownership system in the sugar industry in that territory. (Brief for Waialua, p. 60.)

[7]Brief for Petitioners, p. 41.

squarely rejected by the Court of Appeals for the First Circuit in *Calaf v. Gonzalez*, 127 F.2d 934 (C.A. 1). Nor is they anything in this Court's decision in the *Farmers Reservoir* case (as Waialua suggests) that gives substance to the argument. On the contrary, this Court in that case appeared to be concerned less with the fact of separate ownership than with the nature of the economic function performed by the employees, the degree of its specialization, and its separateness from the work normally done by farmhands.[8]

In a certain, and highly artificial, sense it can be said that railroad employees who haul sugar cane are working "for" a farmer. It can also be said that the welders, carpenters, machinists, etc., involved in this proceeding are working "for" a farmer in the sense that they are paid by the "farmer". However, just as the fact that an activity, even if it be regarded as "necessary" to agriculture, has been held by this Court not to *be* agriculture (*Farmers Reservoir* case, *supra*, 337 U.S. at 759-60), so the fact that the worker is paid by the "farmer" rather than paid by somebody else, should not deprive a worker, otherwise entitled, of the benefits of the Act.

The amicus brief of the American Farm Bureau Federation already referred to, sets forth the underlying reasons behind the statutory exemption of farm employees:

> "Usually the farm employee (and often his family with him) lives upon the farm. Often he has the privilege of producing on the farm commodities for

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[8]See the Brief for the Secretary of Labor as Amicus Curiae, pp. 25-26, which contains a careful discussion of the significance of the independent ownership of the irrigation company in the *Farmers Reservoir* case.

Co. v. McComb, 337 U.S. 755, it was argued that the only way to hold that the employees who tended the company's irrigation system (all of which was located within the state of Colorado) were engaged in the production of goods for commerce, was to say that their work in supplying water to the farmers (who shipped their produce in interstate commerce) was necessary to the production of farm products. And then it was argued that since that production was agricultural, the 13(a)(6) exemption must apply. This Court held that the argument, ingenious as it sounded, was based upon a "misconstruction" of Section 3(j) of the Act and that

> ". . . the conclusion that the work is *necessary* to agricultural production does not require us to say that it *is* agricultural production."[30] (327 U.S. at 759.)

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[30]This Court spelled out the argument in a footnote:

"The fallacy of the notion that an exemption carries with it all occupations whose nexus with interstate commerce is the exempted occupation is demonstrated by authority as well as by logic. In Boutell v. Walling, 327 U.S. 463, 90 L. ed. 786, 66 S. Ct. 631 (1946), for example, the question was whether men who were employed by a service company to service trucks carrying goods in interstate commerce were exempt, under § 13(b)(1), as the employees of an interstate carrier subject to regulation by the Interstate Commerce Commission. Their only connection with commerce was their work on the trucks of the interstate carrier. The Court divided as to whether the employees were themselves employed by the carrier within the meaning of the Motor Carrier Act and, therefore, exempt. But there was no suggestion in either of the opinions in the case that, if not employed by the carrier, they were nevertheless exempt because their only connection with interstate commerce was through an enterprise which was itself exempt.

"In only one case brought to our attention was a contention presented similar to that made here. In Dize v. Maddrix (CCA 4th Md.) 144 F.2d 584 (1944) aff'd. 324 U.S. 697, 89 L. ed. 1296, 65 S. Ct. 895 (1945), the local manufacture of boxes was held to be within the Act because the boxes were used by fishermen to ship their fish in interstate commerce. The fishermen were exempt under a specific exemption in the Act

his own consumption as well as other privileges. His interest in the farm cannot be limited to some eight, nine or ten hours each day or to a forty-hour or five-day week. The hours worked vary greatly with the seasons. Also, on many days there is no way to measure the number of hours the farm employee has devoted respectively to his employer's interests and to his personal interests. In most farm operations there is no satisfactory basis for the keeping of time records. Farm employees are actually on the farm available when needed or in the event of an emergency, around the clock." (Brief for American Farm Bureau Federation as Amicus Curiae, p. 22.)

Such factors, persuasive enough in the case of "employees engaged in agriculture", are totally absent in the case of the employees involved in this proceeding.

3. **The legislative history demonstrates that the agriculture exemption is not applicable here.**

Waialua stresses that, as the bill which later became the Fair Labor Standards Act journeyed through Congress, the definition of agriculture became broader and broader (Brief, pp. 45-54). However, Waialua ignores the fact that the *exemption*, which it here claims, was never conceived to be anything but an "employee exemption" and that throughout the legislative history it was the clear intent and understanding of Congress that the exemption was to apply only to *employees* engaged in agriculture. Certainly there was noting to indicate that, no matter how broadly Congress defined agriculture, it intended to include within the scope of the phrase "any *employee* engaged in agriculture", employees who were fulltime machinists, welders, carpenters, locomotive engineers, etc.

IV.

THE COMMINGLED WORK WEEK.

Waialua argues that an employee who performs non-exempt work must nonetheless be denied the benefits of the Act in any workweek in which he performs some exempt work, or at least that a "tolerance" should be permitted which would deprive such an employee of benefits unless he devoted a "substantial part" of his time to non-exempt activities. (Brief for Waialua, pp. 83-84.)

But this argument overlooks the fact that the exemptions here in question, unlike the exemptions in the situations cited by Waialua, contain their own "built in" tolerance. Thus, the agriculture exemption, where it applies, is broad enough to include work "incident to or in conjunction with" farming operations (Section 3[f]) and the processing exemption, where it applies, covers incidental work performed at the place of processing (Section 7[c]). Waialua is in effect asking the court to give it a tolerance over and above that which Congress has already written into the statute and is asking the court to broaden the scope of the legislative exemption.

Waialua's argument also overlooks the fact that as to those of its employees who were actually engaged in agricultural and related activities, the District Court granted it the full exemption to which it was entitled (*supra*, pp. 3 and 5), and that the processing exemption was granted not only for employees actually working on the processing

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covering fishing, and it was argued that the manufacturer of the boxes should therefore be exempt as 'fishing' because its only connection with commerce was through fishing. The argument was rejected summarily." (337 U.S. at 760, n. 7.)

Clearly, if Congress had intended that all employees of a farmer, irrespective of their function, were to be exempted, "it would have been so easy to have said so" (*Baltimore & P. R.R. Co. v. Grant*, 98 U.S. 398, 403) by making the exemption apply in terms to the employees of designated *employers*.[9]

In a recent decision, the Court of Appeals for the First Circuit said:

> "The difference in terminology employed by Congress strongly indicates that Congress differentiated as to whether employees were to be exempt because they were employed by a particular employer, employed in a particular capacity, employed in a particular industry, or employed in connection with a particular industry. Thus, where the words 'any employee of a carrier by air * * *'; 'any employee employed by any retail or service establishment * * *'; 'any employee of a street, suburban, or interurban electric railway * * *'; and 'any employee of an employer engaged in the business of operating taxicabs' are used, it is the nature of the employer's business which is determinative as to whether or not a particular employee is to be included within the exemption. Similarly Congress intended that more than the physical operations of the employee should be considered when it used such language as 'any employee employed * * * in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways * * *' and 'any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper * * *.' But when Con-

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[9] As we have pointed out (Brief for Petitioners, p. 30), in other sections of the Act Congress did just that. See also Brief for the Secretary of Labor as Amicus Curiae, p. 35, n. 5.

> gress used such language as 'any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman * * *'; 'any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish * * *'; 'any switchboard operator * * *'; 'any employee employed as a seaman * * *'; 'any employee employed in planting or tending trees, cruising, surveying, or felling timber * * *'; and 'any employee employed in the canning of any kind of fish, shellfish or other aquatic forms of animal or vegetable life, or any by-product thereof'; it did not intend that the employee's status would be determined by the business of the employer, but rather that whether or not the employee was exempt depended on the capacity in which the particular employee was acting." (*Mitchell v. Stinson*, 217 F. 2d 210, 214-215 [C.A. 1].)

Clearly the exemption here involved—"any *employee* engaged in agriculture"—is of the character last described by the court, so that the issue here depends "on the capacity in which the particular employee was acting."

Waialua is asking this Court to extend the exemption by implication, and to read the phrase "any employee *engaged in agriculture*" as meaning "any employee *employed by a farmer* irrespective of whether the employee is engaged in railroading, carpentry, welding, etc."

In *Addison v. Holly Hill Fruit Products, Inc.*, 322 U.S. 607, this Court pointed out that Congress provided for eleven specific exemptions from the controlling provisions of the Act, that such exemptions were spelled out in the

greatest of detail, and (at 617) that "exemptions made in such detail preclude their enlargement by implication".[10]

The legislative history quoted so copiously in Waialua's brief is searched in vain to find a single expression indicating that *employees* performing the actual operations revealed by this record to have been performed by these petitioners, were intended to be excluded from the benefits of the Act. As a matter of fact, when debate in the Congress touched upon problems akin to these here presented, the discussion showed an awareness that manufacturing operations were not to be exempted from the Act under the guise of "agriculture". Thus, Senator Black, speaking of an employer who might manufacture shirts in a factory located on a cotton farm, said:

> "The mere fact that he has such a plant on his farm would not make the manufacturing of shirts, for instance, a farming operation. It would still be a manufacturing operation. The same reasoning would apply to any other process of manufacturing." (81 Cong. Rec. 7658.)

As this Court said in the *Farmers Reservoir* case: ". . . the legislative history confirms what *a natural reading* of the language of the agriculture exemption would indicate" (337 U.S. at 764): that is, that the exemption was intended to be applied to employees who in common parlance may be regarded as farm hands. It was never intended to be applied to employees who engaged in the

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[10]One page later in its opinion this Court reiterated this concept in almost identical words: "The details with which the exemptions in this act have been made preclude their enlargement by implication." (*Ibid.*, at 618.)

specialized manufacturing, transportation and maintenance activities engaged in by petitioners here.

II.

THE PROCESSING EXEMPTION.

The error of Waialua's position on this phase of the case stems from its assertion of the proposition that because it admittedly engages in some "processing" within the meaning of Section 7(c) of the Act, all petitioners here are thereby excluded from the overtime provisions of the statute. But it is clear that neither the language nor purpose of the 7(c) exemption, nor the adjudications made thereunder, justify the granting of so sweeping an exemption.

Here, as in connection with the 13(a)(6) phase of the case, it must be remembered that the District Court granted Waialua a substantial exemption, holding that the work of those employees which "takes place in the mill, in connection with the operation of the processing machinery and activities closely and intimately connected therewith" is not covered by the Act. The District Court also exempted the work of employees engaged in weekend repair and maintenance of mill machinery (97 F. Supp. at 223, 224). This eliminated from the case a substantial number of employees. But Waialua is not satisfied and argues that the exemption should be extended to cover the work of employees engaged in operating the mainline railroad, in repairing and maintaining that railroad, in generating power used for non-exempt as well as exempt

activities, and in repairing and overhauling the mill during the annual three month "off season" shutdown. Waialua's argument is unsound for a variety of reasons.

1. On its face the processing exemption applies only where not one, but two conditions are met: (a) the employer must be engaged in the described processing activity, and (b) the employees must be employed in the place where the employer is so engaged. Thus, it is not enough that the employer is engaged in processing. The activities of the employees[11] and the place where they perform them must be examined in order to determine whether or not the exemption applies. Unless the employees themselves are engaged in processing and are engaged in such activities at the place where the processing takes place, they are not to be denied the benefits of the statute.

It is clear that petitioners here who are engaged in operating and maintaining the mainline railroad are not engaged in processing; nor are the carpenters, welders, electricians, plumbers and other craftsmen.[12] These op-

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[11]See *Walling v. W. D. Haden Co.*, 153 F.2d 196, 199 (C.A. 5), cert. den. 328 U.S. 866: "The entire act is pervaded by the idea that what each employee actually does determines its application to him." See also Brief for Petitioners, pp. 30, 55-57.

[12]The verb "process" is defined as: "To treat by a process, specifically, to heat, by steam or otherwise, so as to cook or sterilize". (*Funk & Wagnall's New Standard Dictionary.*) The noun "process" is defined as: "A course or method of operations, natural or artificial, incident to the accomplishment of a result; a systematic series of action in the production of something, as a metallurgical process". (*Funk & Wagnall's New Standard Dictionary.*) "Processing" is defined as: "Arrangement, performance or utilization of a process or processes as in a factory; the actual work or operations involved therein". (*Webster's New International Dictionary.*)

erations are not so intimately connected with processing activities as to justify depriving the employees of their statutory benefits. Indeed, one could start with any admitted "processing" operation and trace it either backward or forward in the industrial complex of which it is a part, and which, of course, would exclude the necessary transportation activities. But this does not make the transportation or other activities a part of processing and does not justify extending the exemption so that it will embrace the transportation workers or the craftsmen. There must be a cutoff point somewhere and the District Court's limitation of the exemption to the work in the mill in connection with the operation of the processing machinery and activities closely related thereto, is reasonable and proper and is consistent with the judicial authority on the question.[13]

In a recent opinion the Court of Appeals for the First Circuit recognized that while employees engaged in transportation, plant production and record keeping, performed activities "closely related and directly essential to" an exempted operation, they were not thereby deprived of the benefits of the Act because such activities, despite that relationship, "cannot be said to be part of" the exempted activity (*Mitchell v. Stinson*, 217 F. 2d 210, 217 [C.A. 1]).

2. This conclusion is compelled not only by the necessity for a strict construction of the exemptions to this "remedial" statute, but also by the very language of the 7(c) exemption itself. Congress expressly limited this

[13]Brief for Petitioners, pp. 47-61; Brief for the Secretary of Labor as Amicus Curiae, pp. 47-59.

exemption to those employees working at the "place of employment" where the processing occurs. Obviously Congress did not intend to permit an employer, by arguing that other activities were "necessary" or "incidental" to processing, to deprive employees engaged in non-processing activities, of the benefits of the Act. Congress adopted the same cutoff point for the exemption—based upon place of performance—as the District Court did. To ignore this clear legislative expression is not only to overturn the fair and reasonable determination of the trier of facts, but is to permit the limited 7(c) exemption to swallow up the entire Act.

3. For as already pointed out,[14] the employees with whom we are here concerned are not engaged at the place where the processing occurs. That place is the mill. But the craftsmen work in separate and distinct shops: carpentry, electric, welding, plumbing, etc.; the railroad men work all along fifty-six miles of railroad track; the railroad repair men work in the roundhouse. None of these is the "place" where processing occurs. Waialua's argument that its "entire premises" may be included as the place where its processing operations occur, is simply an invitation to this Court to read out of the Act the words of limitation so carefully placed there by the Congress—words whose purpose, of course, was to prevent the exemption from nullifying the rest of the statute.

The courts have without exception refused to adopt that kind of argument and, consistent with the repeated admonitions of this Court to construe the Act broadly and

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[14]Brief for Petitioners, p. 53; Brief for the Secretary of Labor as Amicus Curiae, p. 52.

the exemptions narrowly, have limited the application of the 7(c) exemption to those employees engaged in actual processing and have denied it to all others.[15] Waialua's attempted distinction of the cases (Brief for Waialua, p. 67) involves a tortured analysis of them, disregards the basic rules of statutory construction which are required to be applied here, and fails utterly to take into account the limitation of the exemption itself: that is, it is applicable only to employees engaged at the place where the processing occurs.

4. As to the few employees producing power who actually work in the mill building,[16] the record is clear that the power these employees produce is used by Waialua for activities *not exempted* as well as for the exempt processing activities. Under such circumstances the courts have repeatedly held that the exemption does not apply to such employees.[17] Bearing in mind the purpose of the statute as well as the restrictive language of the 7(c) exemption, this approach not only makes sense but is the only one which can be adopted without utterly emasculating the Act.

5. Clearly, during the three months of the year when the mill is closed down, no processing at all takes place and there can be no reasonable basis for claiming that an

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[15]Brief for Petitioners, pp. 55-57; Brief for the Secretary of Labor as Amicus Curiae, pp. 55-56.

[16]Although in parts of the building—i.e., the power house and the fireroom—separate and distinct from the place where the actual processing occurs.

[17]Brief for Petitioners, p. 55; Brief for the Secretary of Labor as Amicus Curiae, p. 54.

exemption exists.[18] In addition to the cases already cited[19] we call attention to the recent decision of the First Circuit referred to by the Secretary of Labor[20] which squarely supports the position that we have here taken: *Mitchell v. Stinson,* 217 F. 2d 210 [C.A. 1]. In that case it was held that since the dead season activities "are not parts of [the exempt activity], the District Court was correct in holding that such employees do not come within the exemption . . ." (*Ibid.,* 217).

6. Waialua's argument on this phase of the case is an effort to persuade this Court to disregard the plain language of the exemption, to overrule a host of judicial decisions supporting the view of both the employees and the Secretary of Labor, and to reverse the traditional policy of narrowly construing exemptions to this remedial statute. That argument cannot be sustained without at the same time so broadening the 7(c) exemption as to jeopardize the benefits which the Act confers upon great numbers of industrial, transportation, and other types of employees who are not themselves engaged in processing.

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[18]The language of Section 7(c) limits the exemption to the employees at the place of employment where the employer "*is* so engaged". This clearly denotes that a present (not past or future) engagement in processing is a condition of the exemption. The repairs made during the weekend shutdown were regarded by the District Court as not involving such an interruption of processing as to destroy the force of the exemption. The three months "dead-season" is something else again.

[19]Brief for Petitioners, pp. 58-60 and n. 29.

[20]Brief for the Secretary of Labor as Amicus Curiae, p. 57.

III.

THE VILLAGE MAINTENANCE WORKERS.

Waialua stresses that the employees engaged in the maintenance of its village were employed to "serve the needs" of the other employees and their families (Brief for Waialua p. 74), and argues that such servicing, even though those other employees were engaged in commerce or the production of goods for commerce, does not bring these village maintenance employees within the coverage of the Act.

This argument completely overlooks the stipulated fact that at the time the company was organized "there was no established community having housing or other services or facilities for living in or near the [sugar producing and processing] area . . . to accommodate the employees whom the plantation *needed for its operations. As a consequence, it became necessary for the Plantation to construct houses . . . to serve the needs of the required number of plantation employees and their families*" (R. 118).[21]

Thus the fact is that the maintenance of the village was (and is) an act of necessity, not of convenience, grace or favor. Without the village there would be no employees and without the employees there would be no plantation. It is as simple as that.[22]

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[21]None of the work in "village maintenance" was new construction. It was all performed in connection with already existing facilities. (R 180.)

[22]While other persons may, and some do, live in the village, and while Waialua's employees are not required to live there—and Waialua makes much of these points (Brief for Waialua, pp. 75-

The village was created and it exists only to give housing to Waialua's employees, and if the necessity for such housing disappeared, so would the village. Therefore, it is apparent that the maintenance and upkeep of the village does have such a "close and immediate tie with the process of production" (*Kirschbaum v. Walling*, 316 U.S. 517, 525), as to bring the employees engaged in such activities within the coverage of the Act. Without the village, Waialua would not have its labor force,[23] and without its labor force, it could not produce goods for interstate commerce. Thus the relationship between the village and its maintenance on the one hand, and the production of goods for interstate commerce on the other, is direct, immediate and clear.

Nor do the cases upon which Waialua relies compel a contrary conclusion.

McLeod v. Threlkeld, 319 U.S. 491, considered only the question of whether the employee there was "engaged in commerce". It did not consider the extent of the coverage of the phrase here involved, "engaged in . . . the production of goods for commerce," which carries with it the broad definition of the word "produced".[24]

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76)—the fact is that of the almost 3000 employees and pensioners of Waialua, only 16 (less than ¾ of 1%) live off the plantation. (R. 120-121.) To say, in circumstances where over 99% of the employees live in company dwellings, that the village is "really a municipality", is to substitute form for substance.

[23]Or at least 99¼% of its labor force.

[24]Section 3(j) of the Act provided at the time in suit:
"An employee shall be deemed to have engaged in the production of goods if such employee was employed . . . in any process or occupation necessary to the production thereof . . ."
(Cf. *Mitchell v. H. B. Zachry Co.*, 127 F.Supp. 377 [D. N.M.].)

In *Wilson v. Reconstruction Finance Corp.*, 158 F. 2d 564 (C.A. 5), cert. den. 331 U.S. 810, plaintiffs were employed by the Defense Plant Corporation, as firemen, guards and operators of a water-plant servicing a housing project operated by their employer. In this project there lived employees of the Dow Magnesium Corporation and the Dow Chemical Corporation, producers of chemicals which were shipped in interstate commerce. Plaintiffs' contention that they were covered by the Act was rejected because *their* employer was not engaged in commerce or in the production of goods for commerce.

> "The independence of the employer of the plaintiffs and the employers of the housing occupants insulates the plaintiffs from the status of producers of goods for commerce." (158 F. 2d at 565.)

That is not the case here. Here, the owner of the village is also the producer of goods for commerce. Indeed, the Fifth Circuit, citing this Court's decisions in *Kirschbaum v. Walling*, 316 U.S. 517, and *Borden v. Borella*, 325 U.S. 679, recognized that:

> "Had plaintiffs been firemen, guards and water-plant operators of the chemical plants during the production of chemicals for commerce, their claim would have more merit." (158 F. 2d at 565.)

The two District Court cases cited by Waialua (*Morris v. Beaumont Mfg. Co.*, 84 F. Supp. 909 [W.D. S.C.] and *Coomer v. Durham*, 93 F. Supp. 526 [W.D. Va.]), present factual situations not at all comparable to the case at bar. In both of them the housing was located in cities or towns which had a substantial independent existence

apart from the company housing.[25] Furthermore, contrasted with the fact that 99¼% of all of Waialua's employees live in Waialua Village (or at least on the plantation) are the facts that in the *Morris* case "less than one-half of the defendant's employees reside in . . . dwellings [furnished by defendant] . . . and on the average more than one-half of them lived in homes owned by themselves or rented from other parties" (84 F. Supp. at 910) and that the same situation obtained in the *Coomer* case.[26] Here, only 16 out of 3000 do not rent from Waialua.

Support for the position urged by the employees here is to be found not only in the cases already cited,[27] but also in *Hawkins v. E. I. DuPont DeNemours & Co.*, 192 F. 2d 294 (C.A. 4), and *Tobin v. Union Nat. Bank of Little Rock*, 112 F. Supp. 702 (E.D. Ark.), and the cases upon which they relied. In the former it was held that workers employed in a plant cafeteria were engaged in

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[25]In the *Morris* case the city was Spartanburg, South Carolina (84 F.Supp. at 910), and in the *Coomer* case the towns (Keokee, Exeter, Andover and Big Stone Gap, Virginia, and Glenbrook, Kentucky) were not "isolated communities, but are near other communities and are located on state highways which are linked with the federal highway system and are accessible by automobile and bus transportation." (93 F.Supp. at 528.)

[26]For instance, at one operation there were 547 employees of whom only 16 (i.e., less than 3%) lived in company houses. The remainder lived in their own homes or in houses which they rented from other persons. All told, there were 3251 employees of whom 1334 (slightly over 40%) lived in houses rented from the company. The other 60% of the employees lived in their own homes or in houses rented from others. (93 F.Supp. at 528.)

[27]Brief for Petitioners, pp. 61-70.

the production of goods for commerce.[28] In the *Tobin* case it was held that maintenance, custodial and janitorial employees of a national banking institution likewise are engaged in the production of goods for interstate commerce.[29]

While it is true that Congress has not chosen to regulate wages and hours in industries *affecting* interstate commerce, this is no reason for a narrow construction of the language which it has used to express its intent on the commerce coverage of the Act. It was clear to this Court long ago that:

> ". . . the purpose of the Act was to extend federal control in this field throughout the farthest reaches

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[28] ". . . the provision of sustenance for the workers who operate machines is as essential as the furnishing of power to the machines themselves and that the feeding of employees conveniently so that they need not leave the plant is an effective step in maintaining production. Basik v. General Motors Corp., 311 Mich. 705, 19 N.W.2d 142, 159 A.L.R. 966. Weight has been given to factory rules which require the workers to remain on the premises during the workday; see McComb v. Factory Stores Co., D.C. N.D. Ohio, 81 F.Supp. 403; and to the fact that in some cases the place of operation is so remote from populous settlements that the provision for food at the situs of the work is essential. Hanson v. Lagerstrom, 8 Cir., 133 F.2d 120; Consolidated Timber Co. v. Womack, 9 Cir., 132 F.2d 101; cf. Bayer v. Courtemanche, D.C. Conn. 76 F.Supp. 193; Kuhn v. Canteen Food Service, D.C. N.D. Ill., 77 F.Supp. 585; Tipton v. Bearl Sprott Co., D.C. S.D., Cal., 93 F. Supp. 496." (192 F.2d at 296.)

[29] It was pointed out that cases like *McLeod v. Threlkeld*, 319 U.S. 491, which did not consider this aspect of the statute but only the scope of the phrase "engaged in commerce", must be distinguished "because of the more restricted test applicable" to the latter phrase. (112 F.Supp. at 704.) The court evidently felt that cases like *Kirschbaum v. Walling*, 316 U.S. 517, and *Borden Co. v. Borella*, 325 U.S. 679, which were directly concerned with the extent of coverage under the phrase "engaged in . . . the production of goods for commerce", were controlling.

of the channels of interstate commerce." (*Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 567.)[29a]

In determining whether an employee is engaged in the production of goods for commerce, that is, whether he is employed "in *any* process or occupation necessary to the production thereof," it would seem that the same "practical considerations" (*Overstreet v. North Shore Corp.*, 318 U.S. 125) which enter into a determination of what constitutes commerce itself should govern.

Here, as we have seen, is a typical "company town": Less than 1% of Waialua's employees live elsewhere; without the village there would be no employees and without the employees there would be no production of goods for commerce. Practically speaking, the maintenance of the village is necessary to the production of goods for commerce; practically speaking, such maintenance has that "close and immediate tie" with production which should result, as the District Court held it did, in coverage.

Waialua's argument (Brief for Waialua, pp. 80-81) that if the work here in question is within the commerce coverage of the Act, then "by the same token" it is exempt under Section 13(a)(6), not only assumes the correctness of Waialua's position respecting the scope of the agriculture exemption, but overlooks the fact that this precise contention has heretofore been made to, and rejected by, this Court. In *Farmers Reservoir & Irrigation*

[29a]The view expressed in this, and related cases upon which petitioners rely, was confirmed just last month by this Court in *Mitchell v. Joyce Agency*, ___ U.S. ___; No. 230, October Term 1954; 21 L.W. 3218 (February 28, 1955).

machinery but for those whose activities were connected therewith and those who engaged in weekend repair and maintenance (*supra*, pp. 14 and 15). Here is tolerance aplenty.

To go beyond this and to deprive an industrial worker of all benefits in a given week because he may be called on to also perform tasks that fall within the 7(c) or 13(a)(6) exemption, is to read into those exemptions more than Congress intended to have there.

The position here urged by both the employees and the Secretary of Labor has been uniformly sustained by the courts,[31] and as the Secretary points out,[32] the cases cited by Waialua dealing with "tolerances" allowed in relation to other exemptions are not applicable here. The particularity with which the agriculture and processing exemptions are stated "preclude[s] their enlargement by implication." (*Addison v. Holly Hill Products Co.*, 322 U.S. 607, 617.)

The acceptance of Waialua's view would result in administrative (and judicial) problems of the most serious sort and courts would find themselves weighing minutes and hours to determine whether an employee did or did not perform a "substantial" amount of non-exempt work in a given workweek. The workweek is the unit most adapted to the proper administration of the Act (*Overnight Motor Transport Co. v. Missel*, 316 U.S. 572) and there is no occasion for any further fractionalization.

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[31]Brief for Petitioners, pp. 72-73; Brief for Secretary of Labor as Amicus Curiae, pp. 60-62.

[32]Brief for Secretary of Labor as Amicus Curiae, pp. 59, 64-65.

V.

CONCLUSION.

Of Waialua's almost 1200 employees (R. 36) something in the neighborhood of 250 are engaged in the occupations represented by the 40 petitioners here.[33] In other words, for over 75% of its working force, Waialua was granted either the 13(a)(6) or the 7(c) exemption by the trial court. It is only the 20% or 25% of its employees who are engaged in railroading; office, laboratory and warehouse work; repair and maintenance (carpentry, welding, painting, plumbing and the like) and a handful engaged in generation of power and working on by-products who are here claiming their statutory right to be compensated at one and one-half times their regular rate of pay for hours worked in excess of forty. This is not a case in which great numbers of farm workers are seeking coverage; it is a case in which a relatively small number of industrial workers and railroaders are claiming that they ought not to be denied what Congress said they should have.

Furthermore, in the case of some of these employees at least, Waialua had already placed them on a forty hour workweek schedule and was paying them such statutory overtime rates for hours worked in excess of that number,[34] but contends that it is not required to do so. (R. 37.)

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[33]Attached hereto as an appendix is a summary, taken from the record, of the number of employees in the various shops and engaged in the various activities here involved.

[34]This includes "most of the office staff and most of the warehouse employees" and "employees in the mill and in allied service shops . . . during the off season". (R. 37.) Also, it is to be noted that Waialua made deductions for withholding tax purposes pur-

A decision in Waialua's favor, therefore, will result in depriving these employees of wage benefits which they are currently enjoying. In other words, Waialua is asking this Court to tell it that it may pay some of its employees less than it is actually now doing.

That the judgment of the District Court which awarded statutory overtime benefits to this relatively small group of industrial and railroad workers is manifestly correct, is demonstrated not only by its own correspondence with the interpretations of the Act made by this Court, and by its correspondence with the views of the Secretary of Labor, but by the fact that at least three other courts have seen fit to cite it with approval and to follow it on three separate and distinct points.

In *Durkin v. Budd,* 114 F. Supp. 865 (N.D. Fla.), the views of the District Court herein on the scope of the agriculture exemption and the point at which agriculture ends and manufacturing begins (Point I, *supra*) were followed (114 F. Supp. at 868).[35] In *Romanca v. Meyer,* 114 C.A. 2d 375, 378, 250 P. 2d 347, 349, the California court cited the decision of the District Court herein in

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suant to the Social Security Law for substantially all of its employees save the field workers and that the point of demarcation was when the cane was delivered to and loaded on the mainline railroad cars. (R. 624-626; *supra*. p. 5, n. 4.)

[35]Conversely, a trial examiner of the National Labor Relations Board has recently refused to follow the opinion of the Court of Appeals in this case and has held the Labor Management Relations Act of 1947 (61 Stat. 163, 29 USC 141, et seq.) applicable to a truck driver employed on a Hawaiian sugar plantation despite the argument that he was engaged in agriculture. (*In re Olaa Sugar Co., Ltd.*, NLRB Case No. 37-CA-84 [Intermediate Report and Recommended Order, Jan. 20, 1955].) To the same effect see *In re Papeekeo Sugar Co.*, 59 NLRB 1532, and *Waialua Agricultural Co. v. United Sugar Workers*, 114 F.Supp. 243 (D. Haw.).

connection with the disposition of a problem relating to the production of goods for interstate commerce (Point III, *supra*), and in *Wyatt v. Holtville Alfalfa Mills, Inc.*, 106 F. Supp. 624 (S.D. Cal.), its views on the commingled workweek (Point IV, *supra*) were adopted.

The views expressed by the Court of Appeals on the contrary are not only inconsistent with this Court's interpretations of the statute and contrary to the Secretary of Labor's views but will, if permitted to stand, have a troubling effect upon the decisions of lower federal tribunals.

We have already pointed out[36] the important considerations of national policy which impel a reinstatement of the District Court's judgment.[36a] Only by such an order will the fulltime mechanics, carpenters, electricians, painters, railroad men, etc., receive the benefits of the Act to which they are so clearly entitled and only by such an order will the damage to the administration of the Act wrought by the Court of Appeals' decision be undone.

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[36]Brief for Petitioners, pp. 83-87.

[36a]Only last month this Court made an order reversing the judgment of a Court of Appeals (*Mitchell v. Joyce Agency*, 211 F. 2d 241 [C.A. 7]) and affirming the judgment of a District Court (*Durkin v. Joyce Agency*, 110 F. Supp. 918 [N.D. Ill.]) in a case arising under this statute. *Mitchell v. Joyce Agency*, ____ U.S. ____; No. 230, October Term 1954; 21 L.W. 3218 (February 28, 1955).

For the foregoing reasons the judgment of the Court of Appeals should be vacated and the judgment of the District Court reinstated.

Dated, San Francisco, California,
March 15, 1955.

Respectfully submitted,
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Of Counsel.

(Appendix Follows.)

Appendix

		Number
1.	Railroad employees--a train crew consists of four men: an engine driver, a fireman, a front brakeman, and a rear brakeman. The company uses between 6 and 9 train crews, the average being 7 (R. 62)	28
2.	There is one Diesel engineer and one operator (R. 62)	2
3.	There is a pickup crew consisting of one locomotive driver and one brakeman (R. 62)	2
4.	There is one hostler and one engine wiper employed in the roundhouse (R. 63, 103)	2
5.	There are 10 crossing watchmen (R. 63)	10
6.	There are 7 men per shift employed in the fireroom (R. 89)	21
7.	There are 2 men per shift in the power plant (R. 93)	6
8.	There are 8 men employed in the machine shop (R. 94)	8
9.	There are 5 men employed in the welding shop (R. 95)	5
10.	There are 4 men employed in the blacksmith shop (R. 96)	4
11.	There are 3 men employed in the tinsmith shop (R. 97)	3
12.	There are 12 men employed in the canloading machine repair shop (R. 97)	12
13.	There are 7 men employed in the tractor repair shop (R. 98)	7

14.	There are 24 men employed in the garage (R. 98)	24
15.	There are 15 men employed in the electric shop (R. 101)	15
16.	There are 25 men employed in the carpenter shop (R. 101)	25
17.	There are 5 men employed in the paint shop (R. 102)	5
18.	There are 6 men employed in the plumbing shop (R. 103)	6
19.	There are 13 men employed as chemists (R. 103)	13
20.	There are 6 men employed in the concrete products plant (R. 103)	6
21.	There are 3 men employed in village maintenance (R. 277)	3
22.	There are 13 men employed in the warehouse (R. 108)	13
23.	There are 22 office workers (R. 108)	22
	Total	243

The record does not reveal the number of section hands or truck drivers.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

CIRACO MANEJA, ET AL., PETITIONERS

v.

WAIALUA AGRICULTURAL COMPANY, LIMITED

WAIALUA AGRICULTURAL COMPANY, LIMITED,
PETITIONER

v.

CIRACO MANEJA, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE SECRETARY OF LABOR AS AMICUS CURIAE

SIMON E. SOBELOFF,
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Department of Justice,
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Solicitor, Department of Labor,
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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 357

CIRACO MANEJA, ET AL., PETITIONERS

v.

WAIALUA AGRICULTURAL COMPANY, LIMITED

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED, PETITIONER

v.

CIRACO MANEJA, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE SECRETARY OF LABOR AS AMICUS CURIAE

The Secretary of Labor, although not a party to this action, has a substantial interest in the case, since the decision below has, for all practical purposes, decided important questions of construction

of the Fair Labor Standards Act (52 Stat. 1060, 29 U. S. C. 201) in a manner contrary to the interpretations of the Secretary of Labor, and, we believe, plainly inconsistent with the decisions of this Court, as well as in conflict with the rulings of another Court of Appeals.

Contrary to the statements in the opinion below (No. 357, App. 86), the Department of Labor was not a "bitterly partisan litigant" in this litigation, and the Department had nothing whatsoever to do with the institution of either the original action or the counterclaims, and it did not participate at all in either of the trial court proceedings. Because of the importance of the issues raised by the parties and decided by the trial court, the Secretary of Labor, in accordance with the usual procedure of the Department, filed a brief as *amicus curiae* when the case reached the Court of Appeals, with the permission of that court. Similarly, the present interest of the Secretary of Labor arises solely from the fact that the decision below has construed important provisions of an Act of Congress for the administration and enforcement of which the Secretary of Labor has primary responsibility.

Petitions for writs of certiorari have been filed by both the employee-defendants (No. 357) and the employer-plaintiff (No. 358). The petition on behalf of the employer seeks review only of the decision of the Court of Appeals dismissing its declaratory judgment action on jurisdictional grounds. It assumes that the decision below did not actually decide "the important issues of statu-

tory construction" on the merits, and suggests that the Court of Appeals be directed to determine them (No. 358, p. 12). The petition filed on behalf of the employees seeks review of the decision below insofar as it reversed the trial court's judgment in their favor and apparently ruled against them on the merits of their counterclaims.

It is difficult to determine from the opinion and orders of the court below just what issues were actually decided. The opinion is unclear and the court denied the Company's petition for rehearing, stating that no clarification was needed (No. 357, App. 107). The opinion denying the petition for rehearing did clearly state that the cause was "remanded with directions to dismiss Waialua's declaratory petition," and that the employees' cross-complaint "is left undismissed" (No. 357, App. 107). But this decision, as well as the court's prior opinion, seems to suggest that the employees' counterclaim should also be dismissed on the ground that "the entire cause was tainted by apparent collusion between the parties in the attempt to obtain an advisory opinion upon constitutional questions" (No. 357, App. 107-108, 85-86). Thus, the ruling below might be construed as deciding only that both the employer's action and the employees' counterclaim should be dismissed for want of jurisdiction because of their collusive nature. This is apparently the construction the Waialua Company's petition (No. 358) places on the decision. See also the Company's Brief in Opposition in No. 357, pp. 8-10.

However, it is apparent that the Court of Appeals was unwilling to stop with the jurisdictional ground in reversing the District Court's judgment in favor of the employees' counterclaim. It expressed in full its views on the merits of the employees' claims, including both the issues of coverage and of exemption under the Act. Indeed, its order for dismissal of the employer's action for lack of jurisdiction seems to be predicated, at least in part, on its view of the issues on the merits. For the court's criticism of the "agreement of all parties and the Department of Labor" that Waialua's employees are "engaged in commerce or in the production of goods for commerce" (No. 357, App. 84), and its conclusion that the action was "collusi[ve]" in an "attempt to obtain an advisory opinion upon constitutional questions" (No. 357, App. 107-108), seem to rest mainly on its belief that Waialua's whole enterprise is outside the scope of the Act because "agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in a constitutional sense" (No. 357, App. 99).

The present status of the case is that the counterclaim of the employees has been "left undismissed," but the judgment of the trial court on the merits in their favor has been reversed and the cause remanded "for proceedings in accordance with the opinion of this court" (No. 357, App. 107, 106). And the "opinion of this court" states in no uncertain terms the appellate court's view that the employees' claims should be rejected on the

merits, so that there would seem little point either in this Court's remanding the case to the Ninth Circuit with directions "to review on the merits the important issues of statutory construction," as is suggested in the employer's petition (No. 358, p. 12), or in allowing the case to go back to the District Court to enter judgment in accordance with the unequivocal views on the merits expressed by the Court of Appeals. Whether or not the issues of statutory construction were technically decided by the decision below, those issues are necessarily presented if the decision is reversed on the jurisdictional issue, as the petition in No. 358 urges. To refer the issues on the merits to the Ninth Circuit again would, therefore, serve no purpose except unnecessarily to prolong this already too prolonged litigation, which has been going on for over seven years, having been before both the trial court and the Court of Appeals twice already.

The posture of the case, therefore, seems to warrant review of the issues on the merits at this time, if the Court feels that there is little substance to the charge of collusion. The views already unequivocally expressed on the merits by the Court of Appeals will undoubtedly be regarded as controlling by the District Courts in the Ninth Circuit and thus will directly obstruct enforcement in that region and will prevent uniformity of enforcement generally. Moreover, the issues on the merits are not only of immediate and large importance in the administration and enforcement of

the Act, but the views announced by the Ninth Circuit are, we believe, plainly inconsistent with this Court's decisions, and are in conflict with the holdings of the First Circuit.

1. The inconsistency of the opinion below with this Court's decision in *Farmers Reservoir and Irrigation Co.* v. *McComb*, 337 U.S. 755, is apparent from the face of the two opinions. Although it recognized that the *Farmers Irrigation* decision held that the production of agricultural crops is production of goods for interstate commerce within the meaning of the statutory language, the court below frankly rejected the decision as a precedent (No. 357, App. 101). Relying on *United States* v. *Butler*, 297 U. S. 1, 68, the court ignored the subsequent decisions of this Court which have repeatedly upheld the constitutional power of Congress under the commerce clause to regulate the production of agricultural commodities destined for interstate movement. See *Wickard* v. *Filburn*, 317 U.S. 111, 118; *Mulford* v. *Smith*, 307 U.S. 38; *Santa Cruz Fruit Packing Co.* v. *Labor Board*, 303 U.S. 453; *Mandeville Farms* v. *Sugar Co.*, 334 U.S. 219, 236-237. The opinion states flatly that "agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in a constitutional sense. Most agricultural products eventually get into interstate transportation. But growing and harvesting of such products is not preparation of goods for commerce. * * * We hold that a farming operation such as growing

the crop or harvesting is not commerce" (No. 357, App. 99, 102).

Similarly, the construction by the court below of the "agriculture" exemption is patently inharmonious with this Court's views. The whole import of the *Farmers Irrigation* decision was that the agriculture exemption must be strictly limited to the operations specified in the statutory definition and is not to be extended to activities which, though "necessary" or even "indispensable" to the specified operations, were not actually a part of agricultural production itself. 337 U. S. at 759-760, 764, 766. Taking a diametrically opposite approach, the Ninth Circuit declares that the findings of the trial court were "clearly erroneous" because that court should have found that "all activities of Waialua upon the island of Oahu were concerned with growing, cultivating and harvesting sugar cane" (No. 357, App. 91), and that all of the employees' activities, "whether furnishing power to the mill or hauling cane from field to mill, fell within the express wording 'harvesting'" as used in the statutory definition (No. 357, App. 90). Thus, according to the Court of Appeals, not only the field workers engaged in plowing, planting, irrigating, harvesting, and other such farming operations should have been found to be engaged in "harvesting", but also railroad transportation employees such as locomotive engineers, section hands and locomotive repairmen, operating or maintaining Waialua's 56 miles of railroad track,

10 locomotives and 712 cane cars, mill employees engaged in processing the cane into raw sugar, and the welders, machinists, mechanics, blacksmiths, carpenters, etc., working in the separate machine and repair shops—although none of these latter groups of employees did any general farm work.

In short, the Court of Appeals concluded that the trial court erred in applying the principle of strict construction to this exemption. Instead, the appellate court reaffirmed its previously announced view that the "agriculture" exemption should be regarded as "remedial" with emphasis placed on "the breadth of the exclusion of agricultural workers" (No. 357, App. 88-89, citing *McComb* v. *Hunt Foods*, 167 F. 2d 905 (C.A. 9), certiorari denied, 335 U. S. 845). This doctrine of broad construction of an exemption from the coverage of the Fair Labor Standards Act is not only directly contrary to this Court's decision in the *Farmers Irrigation* case, relating specifically to the "agriculture" exemption, but is also out of step with the repeated and consistent rulings of this Court that "*any* exemption from such humanitarian and remedial legislation must * * * be narrowly construed" [emphasis supplied] (*Phillips Co.* v. *Walling*, 324 U. S. 490, 493; *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 617; *Powell* v. *United States Cartridge Co.*, 339 U. S. 497, 517).

2. The opinion below also conflicts with several decisions of the Court of Appeals for the First Circuit construing the "agriculture" exemption in relation to virtually identical situations in the

sugar industry in Puerto Rico. *Bowie* v. *Gonzalez*, 117 F. 2d 11; *Calaf* v. *Gonzalez*, 127 F. 2d 934; and *Vives* v. *Serralles*, 145 F. 2d 552.

In these three cases, the First Circuit held that the mill and railroad transportation employees of a sugar producing and processing enterprise are neither within the terms of or the reason for the "agriculture" exemption. The mill employees, said the First Circuit, "are typical factory workers or laborers engaged in maintaining industrial facilities." *Bowie* v. *Gonzalez*, 117 F. 2d at 18. And the employees "engaged in the operation, repair, and maintenance of the company railroad" are engaged in activities "incident to milling rather than to farming and therefore [are] not exempt under the Act." *Calaf* v. *Gonzalez*, 127 F. 2d at 936-937; *Vives* v. *Serralles*, 145 F. 2d at 554.

> The mere fact that in this case the owners of the farms are also the owners of the mill and the transportation facilities does not make transportation an incident to farming.
>
> * * * There seems no rational basis for saying that simply because the ownership of the mills and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provisions of the Act. [*Calaf*, 127 F. 2d at 937-938.]

Contrary to the statement of the court below (No. 357, App. 96, fn.), these decisions cannot be distinguished on the ground that the milling and trans-

portation were "either cooperative enterprises or are done by some outside agency." In the *Calaf* case, the First Circuit expressly refused to base its decision on the fact that the railroad facilities were owned and used jointly by several growers, stating that "We place our decision * * * on the broader ground that the transportation * * * is incident to milling rather than to farming." 127 F. 2d at 936-937. Similarly, in the *Bowie* case, although some of the cane processed by defendant was grown by independent producers, the decision rested also on the independent ground that mill employees were "typical factory workers" outside the terms and intent of the exemption. (117 F. 2d at 18). And the last of the decisions (*Vives* v. *Serralles*), which reaffirmed the *Bowie* and *Calaf* decisions, involved a single business organization which, like the Waialua Company here, operated all the farm lands, the transportation facilities, and the mill.[1]

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[1] The Waialua Company's brief in opposition in No. 357 erroneously states that the views of the Department of Labor with respect to the interpretation of the agriculture exemption "represent a sharp departure from principles long followed by the Department" (Br. in Opp. p. 19, n. 14). In fact, the present views were adopted long before this case arose, and represent long-standing positions of the Department. Counsel for the Waialua Company rely on a provision of an Interpretative Bulletin issued in 1939. But in September 1941, the Administrator of the Wage and Hour Division issued a press release (1942 Wage Hour Manual p. 408) stating that in the light of the decision in *Bowie* v. *Gonzalez*, 117 F. 2d 11 (C.A. 1), it appeared "that the exemption for agricultural employees provided by the Wage and Hour Law does not apply to sugar mill employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner on his own field," and that "the Wage and Hour Division went too far in expressing" such view

3. The importance of the coverage and exemption issues in relation to "agriculture", as defined in the Act, has already been recognized by this Court in granting the writ of certiorari in the *Farmers Irrigation* case, *supra*. Not only was the writ granted in that case in the absence of a conflict among the circuits, but this Court's view of the importance of the issues was emphasized by the particularly painstaking analysis made of the statutory definition of "agriculture" and of the limitations on the scope of the exemption. The opinion below brushes aside this Court's carefully reasoned decision on the curious premise that the exemption issue should never have been reached because there is neither statutory nor constitutional authority to regulate "agricultural pursuits" (*supra*, pp. 6-7).

The implications of the opinion below are much more far-reaching and important than the effects of the decision reviewed in the *Farmers Irrigation* case. If not reviewed by this Court, the opinion will undoubtedly be regarded as controlling by the District Courts in the Ninth Circuit. The immediate practical effect will be to deprive completely of the benefits of this Act thousands of employees in that Circuit, who, the Secretary of Labor believes, are entitled at least to the minimum wage

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in Interpretative Bulletin No. 14, issued in 1939. Thus, this view of the Administrator was adopted six years before the institution of this suit, which was instituted in 1947. Other modifications were adopted in 1943 and 1944 to accord with the decision in *Calaf* v. *Gonzalez*, 127 F. 2d 934 (C.A. 1).

benefits.[2] The employees affected are not only industrial workers in the sugar industry, but large numbers of employees engaged in similar operations related to other agricultural products such as fruits, vegetables, wheat, tobacco, etc. Since these operations are particularly extensive in the regions within the Ninth Circuit, the effect of the decision on these employees alone seems sufficient to warrant review. In addition, the ruling will interfere substantially with the uniform enforcement of the Act, resulting in unjustified competitive advantages for employers in this Circuit as well as causing confusion in other areas where there have not yet been authoritative court decisions on these issues.

Respectfully submitted,

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Solicitor General.

STUART ROTHMAN,
Solicitor,
United States Department of Labor.

OCTOBER 1954.

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[2] Some of such employees may be exempt from the overtime requirements of the Act under other exemptions.

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BRIEF FOR THE SECRETARY OF LABOR AS AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1954

Nos. 357, 358

CIRACO MANEJA ET AL., PETITIONERS

v.

WAIALUA AGRICULTURAL COMPANY, LIMITED

WAIALUA AGRICULTURAL COMPANY, LIMITED, PETITIONER

v.

CIRACO MANEJA ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR AS AMICUS CURIAE

QUESTIONS PRESENTED

The Secretary of Labor is primarily interested in the following questions and they are discussed in this brief:

1. Whether Waialua's employees engaged in growing the sugarcane, manufacturing the raw sugar, and operating the company's railroad and

service shops, are engaged in the "production of goods for commerce" within the meaning of the Fair Labor Standards Act.

2. Whether employees engaged in operating the main-line railroad, in processing cane into raw sugar at the mill, or in providing repair and maintenance services for the mill and railroad, are employed in "agriculture" within the meaning of section 3 (f) of the Act, and are, therefore, exempted by section 13 (a) (6) from the minimum wage and overtime provisions of the Act.

(3) Whether employees engaged in operating and maintaining the main-line railroad, or in repairing and maintaining mill machinery during the off season, are exempt from the overtime provisions of the Act by virtue of the section 7 (c) exemption for the "processing" of sugarcane.

4. Whether employees who in the same workweek perform work, part of which is of the type described in sections 13 (a) (6) or 7 (c), and part of which is covered by the Act and not subject to any exemption, are exempt from the overtime requirements of the Act.

The parties have also briefed the additional questions of whether the District Court had abused its discretion in entertaining the declaratory judgment suit (employer's brief, pp. 25–33; employees' brief, pp. 23–28, 75–83) and whether the village maintenance employees were engaged in the "production of goods for commerce" (em-

ployer's brief, pp. 73–82; employees' brief, pp. 61–71). The Secretary agrees with the parties that the jurisdictional objection raised by the Court of Appeals is without substance, but since that issue is mainly of concern to these particular parties we do not brief it. The question of coverage of the village maintenance employees rests on the phraseology of section 3 (j) prior to its amendment in 1949 (R. 817). Inasmuch as the Department of Labor had expressed no opinion on that question, either prior to or during this litigation, no opinion is expressed herein.[1]

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions are printed in the Appendix, *infra*, pp. 67–69.

STATEMENT

This litigation was instituted in April 1947. The procedural background is adequately set forth in the brief of Waialua, pp. 8–11.

The Secretary of Labor, although not a party to the action, has a substantial interest in the case, since the decision below has, for all practical purposes, decided important questions of construction of the Fair Labor Standards Act (52 Stat. 1060, 29 U. S. C. 201) in a manner contrary to the

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[1] Subsequent to the amendment of section 3 (j) in 1949, substituting "closely related" and "directly essential" for "necessary" in the definition of "produced," the Secretary of Labor expressed the opinion that such village maintenance employees would not be covered. 29 CFR Section 776.18 (b).

interpretations of the Secretary of Labor, and, we believe, plainly inconsistent with the decisions of this Court, as well as in conflict with the rulings of another Court of Appeals.

Contrary to the statements in the opinion below (R. 728), the Department of Labor was not a "bitterly partisan litigant" in this litigation, and the Department had nothing whatsoever to do with the institution of either the original action or the counterclaim, and it did not participate at all in either of the trial court proceedings. Because of the importance of the issues raised by the parties and decided by the trial court, the Secretary of Labor, in accordance with the usual procedure of the Department, filed a brief as *amicus curiae* when the case reached the Court of Appeals, with the permission of that court. Similarly, the present interest of the Secretary of Labor arises solely from the fact that the decision below has construed important provisions of an Act of Congress for the administration and enforcement of which the Secretary of Labor has primary responsibility. This Court in granting the writs of certiorari invited the participation of the Secretary of Labor as *amicus curiae* (R. 843, 814).

WAIALUA'S OPERATIONS

Waialua, the third largest producer of raw sugar in the Territory of Hawaii, is engaged in (1) growing and harvesting sugarcane, and

(2) processing such cane into raw sugar at its mill. It provides its own supporting railroad transportation, repair, maintenance, and other services. Waialua contends that the agriculture exemption of section 13 (a) (6) exempts *all* of its employees from both the minimum wage and overtime compensation provisions, and that the exemption in Section 7 (c) for "processing" sugarcane also exempts all of its employees, except those who work on the fields where the sugarcane is grown, from the overtime requirements of the Act. It employed 1,144 persons as of September 1946 (R. 36) over an area of 9,663 acres (R. 33). Their work and duties are described in the stipulation in detail (R. 27–128), which is summarized below as it relates to the issues herein discussed.

Farming.—In its farming activities, Waialua employs field workers who plow the land (R. 39–40; 191), plant the seed (R. 40–42), cultivate and fertilize the soil (R. 42–44), irrigate the land (R. 45–8, 308–10), and harvest the crop (R. 52–59; 193, 196). They also move the cut cane over portable track (R. 58–59; 198–201) to the company's main line railroad. Since cane is grown in Hawaii on a year around basis, "the cane lands are in various stages of production or preparation" (R. 35). The employees who work in the fields move from one area to another "depending upon the program of plowing, planting, irrigating, fertilizing, applying herbicides and insecticides, weeding and harvesting" (R. 35).

Manufacturing.—The District Court found that to carry on its function as a processor of sugar cane, Waialua operates and maintains a mill composed of a cane cleaning plant, a cane crushing room, a boiling room, and a bagging room (R. 760–1). The mill is an industrial type of facility located in the yard area separate and distinct from the growing fields (R. 721, 723; 66–82). In the cane cleaning plant Waialua's employees operate a series of machines connected by conveyors which receive the cane from the cars, wash off the dirt and mud, and then strip off the leaves (R. 66–72, 310). At the crushing plant, the cane passes under a set of revolving knives which chop it up; it then is crushed between a series of large steam-driven rollers (78″ wide and 39″ in diameter) to extract the juice from the fibre (R. 72–76, 313). The juice is pumped to the boiling house while the remaining cane fibre (called "bagasse") moves by conveyor to the fire room where it is used as fuel in the generation of steam and electricity (R. 75). In the boiling house, the juice is clarified, filtered, evaporated to a syrup, crystallized in centrifuges (R. 76–80, 213; 314, 317), and then bagged for storage and shipment (R. 82; 318).

In order to install improved equipment and methods of operation, as well as to repair mill machinery and equipment, the mill is closed down for approximately three months each year (R. 763; 109–111; 114–116; 176).

Transportation and maintenance.—The company operates a railroad, maintains service shops for the repair and overhaul of its field, transportation, and mill equipment, operates a laboratory for testing its products during the course of field and mill operations (R. 103), a plant for the manufacture of concrete products (R. 105), warehouses (R. 84; 106–108), stables (R. 109), a village community, "similar to a typical small town of a farming community center" (R. 776), which houses all but 16 of plaintiff's employees (R. 121), and an administrative organization (R. 108).

Waialua's railroad system consists of 56 miles of main line and nine miles of portable track. It is equipped with ten locomotives and 712 cane cars. (R. 59–61.) The company maintains a roundhouse for servicing this equipment (R. 103). As the trial court found, the personnel employed to perform this function are typical railroad employees—locomotive engineer (R. 205–206), locomotive repairman (R. 206–208), and section hand (R. 208–210); they do no farm work (R. 204–212). The investment in the railroad amounts to nearly $800,000 (R. 647).

Waialua also maintains complete shops for prompt minor repair and emergency work and major overhaul (R. 94), which employ upwards of 100 men (R. 94–103). They are housed in several substantial buildings separate from the processing operations in an area up to 300 feet

from the mill (R. 723). Included are a machine shop, welding shop, blacksmith shop, tinsmith shop, cane loading machine repair shop, tractor repair shop, garage, electric shop, carpenter shop, paint shop, and plumbing shop (R. 94–103). The persons employed in these activities are individuals with highly specialized skills—machinists, welders, electricians, painters, carpenters, etc. (R. 94–103). They do no general farm work (R. 94–103).

THE DISTRICT COURT DECISION

The District Court held that "in the conduct of these enterprises, [Waialua] has assumed a variety of functions including those of farmer, carrier, manufacturer, shipper, and operator of village communities" (R. 787). It concluded that "Railroading is not farming or processing, nor intended by the Act to be a part of either" (R. 792), that processing of the cane is a separate function and not a subordinate part of farming (R. 796–7), and that the repair shops are "self-sufficient units, operated, not as an incident to any other operation exclusively or dominantly, but rather as an integral part of the over-all combination of separate enterprises jointly conducted by plaintiff" (R. 803).

On the basis of these findings and conclusions, the District Court entered a judgment with which the Secretary concurs. The court held:

(1) The section 13 (a) (6) exemption is applicable to employees engaged in plowing, planting,

cultivating, fertilizing, irrigating, and harvesting, including transporting the cut cane over the portable track to the main line railroad, but does not include employees engaged in any function or activity beyond that point (R. 789–790);[2]

(2) the section 7 (c) exemption is applicable to employees engaged in operating the processing machinery in the mill and in "activities closely and intimately connected therewith", including repair work during the week-end shut down (R. 798–9), but does not include employees performing any other repair, farming, transportation,

[2] The court held that the following activities *were* exempt under 13 (a) (6): Using a tractor to prepare the field for planting by clearing rocks, weeding, plowing; using a tractor to clear irrigation ditches and to make beds for portable track; burning cane in preparation for harvesting; operating cane loading machines to cut and load cane; operating a tractor to haul cane cars to and from the mainline railroad; picking up scattered cane in fields; bulldozing cane into piles; making minor repairs to field equipment; operating the irrigation system (R. 191, 194, 196, 198, 201, 308–10).

The court held that the exemption was *not* applicable to the employees engaged in the operation of the *mainline railroad* (locomotive engineer (R. 205–6), locomotive repairmen (R. 206–7), section hand (R. 208–9), crossing watchman (R. 210–1)); or in the operation of the *processing mill* (cane cleaner (R. 310–2), crushing plant operator (R. 213), evaporator operator (R. 212–3), centrifugal machine operator (R. 314–6), boiling house emplovee (R. 316–7)); or in the *bagging and warehousing of sugar* (bagger and loader (R. 317–8), warehouse clerk (R. 318–9)); or in the *operation of the utility plant* (boiler fireman (R. 216–8), power plant operator (R. 218–220)); or the performance of *maintenance* and *repair* work (auto mechanic (R. 220–223), welder (R. 223–226), machinist (R. 227–231), tractor me-

maintenance or village maintenance activities;[3] and

(3) an exemption is applicable to any work week in which an employee engaged exclusively in one or more exempt activities, but does not apply to work weeks in which he performed some covered nonexempt work (R. 819).

THE COURT OF APPEALS DECISION

The Ninth Circuit reversed the judgment of the trial court (R. 726). It is difficult to determine from its opinion and orders just what issues were actually decided. The opinion is unclear and the court denied the company's petition for rehearing, stating that no clarification was needed (R. 746–7). It concludes that the proceeding

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chanic (R. 231–235, 273–276), caneloading machine repairman (R. 239–243), blacksmith (R. 243–248), painter (R. 256–257), concrete products operator (R. 257–8), plumber (R. 259–263), carpenter (R. 264–273, 277–8)); or the following *miscellaneous occupations* (clerk-stenographer (R. 319–320), truck driver (R. 235–239, 248–256), road grader (R. 279–283), laboratory technician (R. 285–286), utility clerk (R. 286–288)).

[3] The exemption was held *applicable* to employees performing the following work: weighing incoming cane cars at the mill; operating machinery for moving loaded cars into and empty cars out of the mill (R. 310–1); coupling and uncoupling cars at the mill and collecting car tickets (R. 312); regulating the flow of cane through the crushing mills (R. 313); operating machinery for boiling and crystallizing sugar (R. 213, 314–317); operating machinery for bagging sugar and loading bagged sugar into box cars or nearby warehouses (R. 318); and "cleaning and making minor repairs to boiling house equipment" (R. 213).

must be "dismissed for abuse of discretion in entertaining a petition for declaratory judgment" and "attempting to settle a question of jurisdictional and constitutional construction therein" (R. 740–1). However, the court was unwilling to stop with the jurisdictional grounds in reversing the District Court's judgment in favor of the employees' counterclaim.[4] It expressed its views fully on the question of coverage of agricultural production under the Act, as well as on the agricultural exemptions in general and the section 13 (a) (6) exemption in particular; and the judgment remanded the cause "for proceedings in accordance with this opinion" (R. 746). Having decided that the section 13 (a) (6) exemption for employees "employed in agriculture" applied to the mill and railroad employees, as well as those who worked in the fields, the court found it unnecessary to consider the scope of the exemption in section 7 (c), or the applicability

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[4] Even the order for dismissal of the employer's action for lack of jurisdiction seems to be predicated, at least in part, on the court's view of the issues on the merits. For the court's criticism of the "agreement of all parties and the Department of Labor" that Waialua's employees are "engaged in commerce or in the production of goods for commerce" (R. 726), and its conclusion that the action was "collusi[ve]" in an "attempt to obtain an advisory opinion upon constitutional questions" (R. 747), seem to rest mainly on its belief that Waialua's whole enterprise is outside the scope of the Act because "agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in a constitutional sense" (R. 740).

of either section 13 (a) (6) or section 7 (c) to workweeks in which the employee performed some non-exempt activity (R. 746). It, however, left little doubt as to its approach to these questions in emphasizing the "breadth of the exclusion of agricultural workers" (R. 730).

The opinion states that "agriculture is not commerce, interstate or foreign" (citing *United States* v. *Butler*, 297 U. S. 1) even though "most agricultural products eventually get into interstate transportation" (R. 740), and "We hold that a farming operation such as growing the crop or harvesting is not commerce" (R. 742).

On the exemption issue, the opinion declares that the section 13 (a) (6) exemption for employees "employed in agriculture" applies not only to the field workers engaged in plowing, planting, irrigating, harvesting, and other such farming operations, but also to railroad transportation employees such as locomotive engineers, section hands and locomotive repairmen, mill employees engaged in processing the cane into raw sugar, and the welders, machinists, mechanics, blacksmiths, carpenters, etc., working in the separate machine and repair shops. All such activities, said the Court of Appeals, constitute "harvesting" (R. 732). Even if they were not "harvesting," they were performed by a "farmer" or "on a farm" within the scope of the exemption (R. 732).

SUMMARY OF ARGUMENT

I

There is no dispute between the parties, and the Secretary of Labor agrees, that Waialua's employees are engaged in the production of agricultural products for interstate commerce within the coverage of the Fair Labor Standards Act. The ruling by the Court of Appeals below that production of agricultural products is beyond the scope of the Act and the constitutional power of Congress is plainly erroneous. *Farmers Reservoir & Irrigation Co.* v. *McComb*, 337 U. S. 755; *Wickard* v. *Filburn*, 317 U. S. 111, 118; *Mulford* v. *Smith*, 307 U. S. 38; *Mandeville Farms* v. *Sugar Co.*, 334 U. S. 219, 236–7.

II

The conclusion of the Court of Appeals that *all* of Waialua's employees are excluded from both the minimum wage and overtime requirements of the Act under the exemption for "any employee employed in agriculture" is contrary to this Court's construction of this particular exemption (*Farmers Reservoir & Irrigation Co.* v. *McComb*, 337 U. S. 755), as well as diametrically opposed to the well established principle that "*any* exemption" from the Fair Labor Standards Act must be "narrowly construed." *Phillips Co.* v. *Walling*, 324 U. S. 490, 493; *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 617;

Powell v. *United States Cartridge Co.*, 339 U. S. 497, 517. [Emphasis added.]

1. While Waialua's field workers are within the scope of the agriculture exemption, the employees engaged in the separate processing plant, in the main line railroad operations, and in the separate machine and repair shops, are typical factory and industrial workers not within the intent or terms of the statutory definition of agriculture, either in its primary or its secondary meaning. See *Farmers Reservoir & Irrigation Co.* v. *McComb, supra.* The fallacy of the Ninth Circuit's ruling lies in its assumption that the mere fact that Waialua is engaged in farming suffices to sweep all of its employees within the exemption, even those working in the separate industrial and non-farming operations. But Waialua is not simply a farmer—it is a hybrid organization engaged in several different enterprises, only one of which is farming. The company no more operates its railroad transportation system, its processing mills, and its repair and maintenance shops, as a farmer, than it engages in growing cane as a processor.

Waialua occupies a position with reference to the agriculture exemption analogous to the relationship of a chain store corporation to the retail establishment exemption. Just as the wholesale functions of the "hybrid" retailer-wholesaler are outside the scope of the retail establishment exemption (*Phillips Co.* v. *Walling*, 324 U. S.

490), so the processing and related functions of a hybrid farmer-processor are outside the scope of the agriculture exemption.

2. The Ninth Circuit's construction of the exemption in the instant case is directly in conflict with the decisions of the First Circuit Court of Appeals with respect to a virtually identical situation in the sugar industry in Puerto Rico. The First Circuit has had no difficulty in recognizing the separate and distinct character of the processing mill and railroad transportation operations. It has held that the mill employees "are typical factory workers or laborers engaged in maintaining industrial facilities" (*Bowie* v. *Gonzalez,* 117 F. 2d 11, at 18), and that the main line railroad transportation employees are engaged in activities "separate and distinct from agriculture" and "incident to milling rather than farming." (*Calaf* v. *Gonzalez,* 127 F. 2d 934; *Vives* v. *Serralles,* 145 F. 2d 552).

Contrary to the statement of the court below, these decisions cannot be distinguished on the ground that the milling and transportation were "either cooperative enterprises or are done by some outside agency." The First Circuit expressly refused to base its decision on this narrow ground, holding explicitly that "there seems no rational basis for saying that simply because the ownership of the mills and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and

distinct from agriculture are exempt from the provisions of the Act" (*Calaf* v. *Gonzalez*, 127 F. 2d at 937–938).

3. The Ninth Circuit's view that the manufacturing, railroad transportation, and maintenance shop employees are engaged in "harvesting" is so plainly untenable that not even Waialua undertakes seriously to support this proposition. The company places its reliance on the secondary meaning of agriculture, which this Court emphasized is "limited to practices performed by a farmer or on a farm," and in addition performed "as an incident to or in conjunction with" the employer's farming operations. None of these conditions is met so far as the employees working in the mill, on the main line railroad, and in the repair shop operations are concerned.

a. These operations are *not* performed by Waialua in its capacity as a "farmer," and plainly the employees so engaged are not farmers. That the occupations of the employees are significant in determining the applicability of this exemption is evident from the wording of the exemption as well as from the basic approach of the whole Act. The Act is pervaded by the idea that what each employee actually does determines its application to him, regardless of the nature of the employer's general business. *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 571–2; *Kirschbaum Co.* v. *Walling*, 316 U. S. 517,

524. And the agriculture exemption is an "employee" exemption, in contrast to some other exemptions which expressly except an "employer" or an "establishment."

b. Nor is the work of these employees performed "on a farm" in any normal sense of that term. Waialua's growing fields are distinct from the processing plant, the main railroad line, and the repair and maintenance shops, both in physical location and in functional organization.

c. The distinct nature and organization of Waialua's manufacturing and railroad transportation functions also establishes that these are not "practices" performed "as an incident to or in conjunction with" farming operations within the meaning and scope of the exemption. The use of the word "practices" in the second branch of the definition of agriculture, as well as the plain purpose of this exemption, support the view that the exemption was not designed to apply to distinct business enterprises of an industrial nature, which require organization, equipment, and skills quite unrelated to farming.

d. The *Farmers Irrigation* decision establishes that a separately organized function—even such an "indispensable prerequisite for agricultural production" with such "immediacy of the connection" to cultivation as irrigation (337 U. S. at 759, n. 6)—is not within the exemption if performed *off the farm*. The import of this decision

is not limited to a separately incorporated employer. Separate incorporation was of significance in *Farmers Irrigation* because the irrigation function is so immediately connected with the "elemental process" of farming (337 U. S. at 760) that separate incorporation was the main evidence of the distinct and separate character of the activity. But the rationale of the *Farmers Irrigation* decision applies equally where, as in the instant case, there is other evidence of "a clear and definite division of function" (*id.* at 763).

4. Waialua's charge that the views of the Department of Labor on the agriculture exemption "represent a sharp departure from principles long followed by the Department" is plainly untenable. The present views were all adopted by 1943, or some four years before the institution of this litigation, in order to reflect judicial decisions handed down subsequent to the Administrator's initial interpretations. The original interpretations were issued "at a time when, in the nature of things interpretation was tentative, or, if it was not, ought to have been." *Dairymen's League Cooperative Association* v. *Brannan*, 173 F. 2d 57, 65 (C. A. 2), certiorari denied, 338 U. S. 825. Plainly, the long standing administrative interpretations are not to be deprived of persuasive weight, where, as we submit to be the case here, "the second thought of the Administrator was better than his first" (*id.* at 65–66).

5. The court below proceeded on the fallacious premise that the *exemption* is "remedial" legislation and emphasized "the breadth of the exclusion of agricultural workers," ignoring this Court's repeated emphasis on the far-reaching remedial purposes of this Act for which "Breadth of *coverage* was vital to its mission" (*Powell* v. *U. S. Cartridge Co.*, 339 U. S. 497, 510 (emphasis added)). That this exemption from both minimum wage and overtime requirements was not intended to have the sweeping scope given it by the Court of Appeals is confirmed by the lesser exemptions, from the overtime requirements only, for "processing" of certain agricultural crops under specified conditions. Section 7 (c), discussed in Point III.

III

The employees engaged in the mill in the processing of sugarcane, including repair and maintenance activities in the mill when it is operating, are within the overtime exemption of Section 7 (c). This processing exemption, however, is limited to employees who work in the "place of employment where he [the employer] is so engaged." The trial court therefore correctly held that the exemption does not apply to employees operating the main line railroad, to employees who repair and maintain the railroad facilities, or to employees who repair and maintain mill equipment during the three months'

"off season" when no processing is going on in the mill.

This exemption has long and consistently been construed, both administratively and judicially, as limited to the particular unit or "place of employment" in which the processing operations are carried on, and as not including the entire premises of an employer who is engaged in distinct operations other than processing. This construction conforms to the basic and well settled principle of strict construction of any exemption from this Act. *Phillips Co.* v. *Walling*, 324 U. S. 490, 493.

The trial court's holding that the exemption is inapplicable to employees during the "off season" also accords with the terms as well as the consistent judicial construction of the exemption. When no processing operations are going on, plainly the employees do not meet the statutory language that they be "in" a "place" where the employer "*is* so engaged" (emphasis added).

IV

The District Court correctly held that an exemption was not applicable to any workweek in which an employee performs covered nonexempt work in addition to exempt work. This conclusion accords with the view that has been widely adopted by the courts throughout the years of this Act's operation. It has been recog-

nized that, if more than lip service is to be paid to the principle of strict construction of exemptions from the Act, exemptions cannot be held applicable to an employee or an employer simply because he engages in some exempt work, if he also engages in other work which Congress clearly intended to subject to the statutory standards. Any other interpretation would open the door wide to evasion of the purpose of the Act "to eliminate * * * substandard labor conditions throughout the nation"; it would result in absorbing into the exemptions parts of industries and activities plainly covered by the Act, solely because the same employees or employers happened to engage in several kinds of activities, and it would thus largely defeat the "Breadth of coverage" of this Act which is "vital to its mission" (*Powell* v. *U. S. Cartridge Co.*, 339 U. S. 497, 510, 516).

ARGUMENT

I

Waialua's employees are engaged in the "production of goods for commerce," within the meaning of the Fair Labor Standards Act

There is no dispute between the parties, and the Secretary of Labor agrees, that production of agricultural products for interstate shipment is interstate commerce within the regulatory power of Congress, and is "production of goods for commerce" within the meaning of the Fair Labor

Standards Act (R. 740, 742). The opposite ruling by the Court of Appeals is clearly contrary to numerous decisions of this Court.

Although the court below recognized that *Farmers Reservoir and Irrigation Co.* v. *McComb*, 337 U. S. 755, held that the production of agricultural crops is production of goods for interstate commerce under the language of the Act, it frankly rejected the decision as a precedent (R. 742). Relying on *United States* v. *Butler*, 297 U. S. 1, 68, the court flatly ignored the subsequent decisions of this Court which have repeatedly upheld the constitutional power of Congress, under the commerce clause, to regulate the production of agricultural commodities destined for interstate movement. See *Wickard* v. *Filburn*, 317 U. S. 111, 118; *Mulford* v. *Smith*, 307 U. S. 38; *Santa Cruz Fruit Packing Co.* v. *Labor Board*, 303 U. S. 453; *Mandeville Farms* v. *Sugar Co.*, 334 U. S. 219, 236–237.

II

The exemption in section 13 (a) (6) for "any employee employed in agriculture" exempts employees engaged in Waialua's farming activities but does not extend to employees working in the sugar mill, operating the railroad, or working in the repair and maintenance shop

Agriculture, as defined in section 3 (f) of the Act, includes (*infra*, pp. 67–68)

> farming in all its branches and among other things includes the cultivation and tillage of the soil * * * the production,

> cultivation, growing, and harvesting of any agricultural or horticultural commodities * * * and any practices * * * performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

As construed by the Court of Appeals below, this *exemption* is given the status of "remedial" legislation to be "broadly and liberally" construed (R. 730–731, 831), so that it would extend to all of Waialua's 1,144 employees. The Court would exclude from both the minimum wage and the overtime requirements of the Act not only the field workers engaged in plowing, planting, irrigating, harvesting, and other such ordinary farming operations, but also railroad transportation employees such as locomotive engineers, section hands, and locomotive repairmen (operating or maintaining Waialua's 56 miles of railroad track, 10 locomotives and 712 cane cars), mill employees engaged in processing the cane into raw sugar, and the welders, machinists, mechanics, blacksmiths, carpenters, etc., working in the separate machine and repair shops.

This construction, we submit, is plainly contrary to this Court's decision in *Farmers Reservoir & Irrigation Co.* v. *McComb*, 337 U. S. 755, relating specifically to the "agriculture" exemption, as well as diametrically opposed to the well established principle that "*any* exemption" from

tion humanitarian legislation must "be *narrowly* construed" and not extended to "other than those plainly and unmistakably within its terms and spirit" [emphasis added]. *Phillips Co.* v. *Walling*, 324 U. S. 490, 493; *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 617; *Powell* v. *United States Cartridge Co.*, 339 U. S. 497, 517. The correct reading of the exemption, as applied to comparable circumstances, has been made by the First Circuit.

1. The whole import of this Court's opinion in the *Farmers Irrigation* case was that the agriculture exemption must be strictly limited to the operations specified in the statutory definition, and is not to be broadly construed to embrace activities which, though "necessary" or even "indispensable" to the specified operations, are not actually a part of agricultural production itself (337 U. S. at 759, 760, 764, 766); nor is the exemption to be extended to "non-agricultural" functions which are not performed on a farm or by farmers, but are performed in separate industrial plants or enterprises by ordinary industrial workers. Such workers as "the maintenance man in a power plant and the packer in a fertilizer factory," the Court said, "are not employed in agriculture, even if their activity is necessary to farmers * * *. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture" (*Id.* at 761–762).

The fallacy in the Ninth Circuit's construction

of this exemption is that the court assumed that the mere fact that Waialua is engaged in farming, in its capacity as a sugarcane grower, suffices to sweep all of its employees within the exemption, even those employees working in industrial and nonfarming operations and employed by the company in its capacity as a manufacturer or processor. The realistic fact here is that Waialua is not merely a farmer—it is a hybrid organization engaged in several different enterprises, only one of which is farming. In its over-all operations, Waialua cannot properly be described simply as a farmer or grower; it functions as an industrial processor as well as in the capacity of a farmer. Its processing mill and railroad transportation operations, like the power plant and fertilizer factory referred to in the *Farmers Irrigation* opinion, are separate industrial functions, not "agriculture" (337 U. S. at 761–762).

The mere fact that the latter operations are not carried on by a separately incorporated employer is not, we believe, sufficient basis for ignoring the actual separate character of the mill and transportation operations. The independent incorporation of the company was significant in the *Farmers Irrigation* case because the irrigation function is one of those activities so immediately connected with and indispensable to "the *elemental* proce s of planting, growing and harvesting crops" (emphasis added, 337 U. S. at

760, also 759 n. 6)—*i. e.*, a function so immediately connected with farming in its *primary* sense—that the independent incorporation of the employer is about the only evidence of its separateness. But the separateness of other operations less closely connected with farming is plainly evident even in the absence of a separately incorporated employer. Here, as the trial court's findings show, "there is a clear and definite division of function" (337 U. S. at 763) without the demarcation line of independent incorporation.

Waialua is admittedly a "farmer" in its sugarcane growing operations, and the mere fact that it is a large grower does not, of course, affect the availability of the exemption insofar as it is in fact engaged in farming. But obviously Waialua is something else in addition to being a grower—it also engages in separate and extensive industrial processing operations of the same character as similar independently operated processing mills. In law as well as in commonsense, the employees in these non-farming operations are no more "farmers" or employed by a "farmer" than are employees working in a processing plant operated independently by an employer not engaged in farming. Waialua no more operates its railroad transportation system, its processing mills, and its repair and maintenance shops as a farmer than it engages in growing cane as a processor. The former operations are patently even more "separate and independ-

ent productive functions" (337 U. S. at 761) than was the irrigation function in the *Farmers Irrigation* case.

The short of it is that Waialua occupies a position with reference to the agriculture exemption analogous to the relationship of a chain store corporation to the "retail * * * establishment" exemption provided in section 13 (a) (2). This Court has held that "most chain store organizations are * * * of a hybrid retail-wholesale nature," and has denied the "retail * * * establishment" exemption to central offices and warehouses performing wholesale functions, even though their wholesale services are restricted to exempt retail outlets owned and operated by the same company. *Phillips Co.* v. *Walling,* 324 U. S. 490, 495. Just as the wholesale functions of a "hybrid" retailer-wholesaler are outside the retail establishment exemption, so the processing and related functions of a hybrid farmer-processor are outside the scope of the agriculture exemption.

2. Faced with a comparable situation in the sugar industry in Puerto Rico, the First Circuit, with no hesitation, has declared the "agriculture" exemption inapplicable to the distinctly nonfarming operations of the growers, in holdings which are directly in conflict with the ruling below. *Bowie* v. *Gonzalez,* 117 F. 2d 11; *Calaf* v. *Gonzalez,* 127 F. 2d 934; and *Vives* v. *Serralles,* 145 F. 2d 552.

In these three cases, the First Circuit held that the mill and railroad transportation employees of a sugar producing and processing enterprise are within neither the terms of, nor the reason for, the "agriculture" exemption. The mill employees, said the First Circuit, "are typical factory workers or laborers engaged in maintaining industrial facilities." *Bowie* v. *Gonzalez,* 117 F. 2d at 18. And the employees "engaged in the operation, repair, and maintenance of the company railroad" are engaged in activities "incident to milling rather than to farming and therefore [are] not exempt under the Act." *Calaf* v. *Gonzalez,* 127 F. 2d at 936–937; *Vives* v. *Serralles,* 145 F. 2d at 554:

> The mere fact that in this case the owners of the farms are also the owners of the mill and the transportation facilities does not make transportation an incident to farming.
>
> * * * There seems no rational basis for saying that simply because the ownership of the mills and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provisions of the Act. [*Calaf,* 127 F. 2d at 937–938.]

Contrary to the statement of the court below (R. 737–738, fn.), these decisions cannot be distinguished on the ground that the milling and transportation were "either cooperative enter-

prises or are done by some outside agency." In the *Calaf* case, the First Circuit expressly refused to base its decision on the fact that the railroad facilities were owned and used jointly by several growers, stating that "We place our decision * * * on the broader ground that the transportation * * * is incident to milling rather than to farming." 127 F. 2d at 936–937. Similarly, in the *Bowie* case, although some of the cane processed by defendant was grown by outside producers, the decision rested also on the independent ground that mill employees were "typical factory workers" beyond the terms and intent of the exemption. (117 F. 2d at 18.) And the last of the decisions (*Vives* v. *Serralles*), which reaffirmed the *Bowie* and *Calaf* decisions, involved a single business organization which, like the Waialua Company here, operated all the farm lands, the transportation facilities, and the mill. No later decision of the First Circuit has modified these pertinent holdings.

Despite Waialua's assertion (br., p. 59), the First Circuit's decision in *Vives* v. *Serralles,* 145 F. 2d 552, does not hold that hauling and processing employees are within the exemption when they are hauling or processing sugarcane grown by their employer. That decision leads to just the opposite result. It reaffirmed the principle enunciated in the *Calaf* case (127 F. 2d 934), ***supra,*** that "transportation * * * is incident to milling rather than to farming," (*ibid.* at 554), but held

the principle inapplicable where the activities under consideration "begin at a point when the sugarcane has been cut in the field and continue ***up to*** the concentration point" (*ibid.* at 555, emphasis added). It is at and after this "concentration point" that the situation in the instant case arises. It is the Secretary's view, as the trial court held, that the section 13 (a) (6) exemption *is* applicable to the employees who haul the cane *to* the main line railroad, but that, as stated in *Vives* v. *Serralles, supra,* at 554, employees "engaged in the operation, repair, and maintenance of the company railroad," after "concentration," are not within the agricultural exemption.

In *Vives* v. *Serralles,* the "concentration point" is fixed with reference to the three types of transportation that were used on the growing fields. One of these types was practically identical with the transportation system used in the case at bar. It is described by the court as follows (145 F. 2d at 553):

> The cane is hauled to the concentration point in various ways; in small railroad cars pulled by oxen over portable tracks to a siding or switch where the cars are picked up by locomotives operated on the permanent tracks; * * *.

Except for the irrelevant detail that the company here used tractors rather than oxen in that part of the transportation which occurred in the grow-

ing fields over portable tracks, Waialua's system of rail transportation is identical (R. 57).

The reasons which led the First Circuit, in *Serralles,* to fix the point at which the portable tracks meet the permanent tracks as the dividing line between activities which are exempt under section 13 (a) (6) and non-exempt activities are equally applicable to the case at bar. It was there pointed out that the wages of laborers in the field engaged in operations up to the "concentration point" could be regulated by the Secretary of Agriculture under the Sugar Act of 1937 (50 Stat. 903, 7 U. S. C. 1100 *et seq.*). The need for a clear dividing line between the coverage of the two Acts, therefore, suggested the "concentration point" as an appropriate point of cleavage. The fact that this point also marked the end of the "harvesting" operation—according to the Administrator's interpretation and the view of the court—was regarded as decisive. These facts and considerations are, of course, the same in the present case.

3. The error in the view taken by the Ninth Circuit is particularly evident from its conclusion that the manufacturing, transportation, and maintenance employees are engaged in "harvesting" within the primary meaning of agriculture. See the court's statement that the trial court should have found that every "employee at the mill was engaged in 'harvesting' an agricultural product" and that "any activity of any employee

which assisted in this operation, whether furnishing power to the mill or hauling cane from field to mill, fell within the express word 'harvesting' used in the enactment." (R. 732.) Not even Waialua undertakes seriously to support this aspect of the Ninth Circuit's opinion (br. pp. 35*ff*). Plainly, these operations are not "the cultivation and tillage of the soil" or "production, cultivation, growing, and harvesting," within the "primary meaning" of the statutory definition of "agriculture" (see *Farmers Irrigation,* 337 U. S. at 762–766). Manufacturing sugar and railroad transportation are obviously even less a part of "harvesting," "in any normal use of the term" (*ibid.*), than irrigation is a part of agricultural "production."

Waialua, therefore, necessarily must place its reliance on the second and broader meaning of "agriculture" in section 3 (f). But, as this Court emphasized in the *Farmers Irrigation* decision (*id.* at 766), this part of the definition is "limited to practices performed by a farmer or on a farm," and in addition must be performed "as an incident to or in conjunction with" the employer's farming operations. As we have already suggested, none of these conditions are met with respect to Waialua's employees working in the mill, in transportation, and in repair and maintenance operations.

a. As noted above, Waialua's manufacturing, transportation, and maintenance and repair func-

tions are not performed by Waialua in its capacity as a farmer. Even if it were assumed that the exemption includes the work of employees who do no farming but are merely employed by farmers, this condition would not be met here because the workers are employed, not by a farmer, but by a hybrid organization in its other nonfarming capacities. Compelling confirmation of this conclusion is found in the nature of the occupations of the particular employees. These men are not farmers and do not work for a farmer. They are, as described by the First Circuit, "typical factory workers or laborers engaged in maintaining industrial facilities." See *Bowie* v. *Gonzalez,* 117 F. 2d 11 at 18. They are factory workers operating cane cleaning machines, crushing plants, evaporators, centrifuges, steam turbines and electric generators; locomotive engineers, section hands and locomotive repairmen; welders, machinists, mechanics, blacksmiths, carpenters, painters, etc. working in separate machine and repair shops. These employees are not employed by the company in its "farming" aspect but in its industrial and other capacities. And workers such as these are not within the purpose and scope of the agriculture exemption. As stated by the First Circuit in the *Bowie* case (117 F. 2d at 18):

> * * * it would seem that the employees involved in this case would not fall with-

> in the reason for the exemption which was accorded to agricultural employees. The Act was drawn not to include the latter because agricultural labor was not subject to the usual evils of sweatshop conditions of long hours indoors at low wages. Also any attempt to regulate agricultural wages would present a difficult problem since a substantial part of the agricultural workers' income must of necessity be for board and room. The employees in the instant case are typical factory workers or laborers engaged in maintaining industrial facilities. The exemption of agricultural labor from the operation of the Act is not admissible as an argument to exempt labor in an industry from its operation. *Fleming* v. *Hawkeye Pearl Button Co.*, [113 F. 2d 52 (C. A. 8)]; cf. *North Whittier Heights Citrus Association* v. *National Labor Relations Board*, 9 Cir., 1940, 109 F. 2d 76, 80–81. For these reasons we reject the appellants' contention that the employees here involved are engaged in agriculture within the meaning of Section 13 (a) (6) and Section 3 (f).

Moreover, the critical significance of the occupations of the *employees*, in determining the applicability of this exemption, is evident from the wording of the exemption as well as from the basic approach of the whole Act. The exemption here is for "any employee *employed in* agriculture" (emphasis added), just as the general cov-

erage of the Act applies to "employees * * * engaged in commerce or in the production of goods for commerce" (sections 6 and 7), and therefore "is dependent on the character of the employees' work," not on the employer's general business. *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 571–2; *Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 524. As aptly stated by the Fifth Circuit respecting a similarly worded exemption for "employees *employed as* seamen" (emphasis the court's):

> The italicized words mean something; they are not mere tautology. They warn us to look to what the employees do, and not to rest on a mere matter of a name, or the place of their work. *The entire Act is pervaded by the idea that what each employee actually does determines its application to him.* He himself must be engaged in commerce, or in producing goods for commerce, to come under the Act; and in most of the exemptions, as in this one, what he does is expressly made the test of exclusion [emphasis added in this quotation, *Walling* v. *W. D. Haden Co.*, 153 F. 2d 196, 199, certiorari denied, 328 U. S. 866].[5]

[5] When Congress wished to exempt employees of a particular type of *employer* or of an organization, it clearly expressed this intention by use of the word "employer" or "establishment." Thus, sections 13 (a) (9), 13 (a) (12), 13 (b) (2), and 13 (b) (3) exempt employees of a local street car or bus "carrier," "of an employer engaged in the business of operating taxicabs," of an "employer" subject to Part I of the Interstate Commerce Act, and of a "carrier" by air subject to the provisions of Title II of the Railway Labor Act, respectively; sections 13 (a) (2) and 13 (a) (4) exempt employees in a local retail or service "establishment."

Similarly, whether or not an employee is exempt under section 13 (a) (6) depends upon whether *he* is individually employed in "agriculture" and not whether his employer is to some extent engaged in agriculture. The fact that the employees through whom Waialua carries on its farming are within the exemption for employees "employed in agriculture" does not lead to the conclusion that its employees who manufacture raw sugar and operate its railroad transportation system are also within that exemption. It is plain, we submit, that the mill, railroad transportation, and repair shop work is not performed "by a farmer".

b. Nor is the work of these employees performed "on a farm" in any normal sense of that term. Obviously, the whole of Waialua's 9,663 acres is not a "farm", and it is a misuse of that term to include within its scope the areas set apart for industrial, railroad, and comparable nonfarming activity. The fields on which the sugarcane is grown are distinct from the areas allotted to the processing plant, the main railroad line, and the repair and maintenance shops (R. 721, 723). The buildings in which the milling operations are carried on, and the maintenance and repair shops, are on grounds distinct from the growing fields (R. 721, 723, 66–82). The mainline railroad (as distinguished from the portable track) is not laid on the growing fields (R. 59–63). The fortuitous fact that these areas

may be contiguous with the farming portion of the company's property cannot conceal the separateness of activity which would be plain even to Waialua if there were intervening land.

c. The distinct nature and organization of the manufacturing and railroad functions also establishes that these are not "practices" performed "as an incident to or in conjunction with" farming operations within the meaning and reach of the exemption. The use of the word "practices" in the second branch of the definition of "agriculture" is itself a strong indication that the exemption was not intended to apply to distinct industrial functions not ordinarily performed by a farmer or on a farm. "Practices" suggests, rather, activities which are normally carried on by farmers as an incident to and in conjunction with their ordinary farming activities.

Here, on the other hand, as stated by the trial court, "The mill operations are so conducted as to assume the character of a distinct business enterprise of an industrial nature" (R. 796), and the main line transportation activities are separate and distinct from the field activities (R. 792). Organizationally, the functions are separated; the farming operations are performed through a field department (R. 633–4, 643) headed by a field superintendent; the processing, transportation, and repair operations are performed through a factory and shop department headed by a factory superintendent (R. 633–4, 643). Manufacturing and

transportation operating charges are segregated from those concerned with farming (R. 178). The mill is operated by a separate work force which "does no work in the fields" (R. 796–7). Both the main line transportation and manufacturing activities require organization, equipment, and skills quite unrelated to farming. As the trial court found:

> A separate work force is employed for the processing operation in the mill; it does no work in the fields; it is paid in accordance with a scale of hourly rates which are different and distinct from the system used, partly at contract rates and partly at hourly rates, to pay farm labor [R. 796–7].
>
> * * * * *
>
> Railroad operation is a systematic business calling for the employment of skilled, experienced men, trained to quick, keen perception (not farm hands or mill hands) for handling locomotives and moving cars (not the goods in transit), and for the maintenance of roadbed, track and structures, and roundhouse care and servicing of locomotives—all specialized technical work [R. 792].

Waialua asserts that its substantial activities in operating the mill, running the railroad, and providing the repair and maintenance services do not distinguish it from farmers generally since "every farmer" is a "carrier" and a "manufacturer", in addition to being a farmer, because he "hauls his products from the fields to storage"

or to market after transforming the product he grows "into marketable condition," (br., p. 38). But what the company fails to recognize is that while farmers generally have barns, silos, and wells (br., p. 39), Waialua has elaborate industrial and railroad facilities (R. 721–723) not to be found on the ordinary farm. Some farmers may engage in processing or transportation activities through employees who normally work at tilling the soil, but Waialua performs these functions through a separate organization (R. 633–4, 643) and employs a large number of specially skilled craftsmen who do no farming at all (R. 790, 802). The differences between the two situations are so great as clearly to require different treatment. The First Circuit has pointed out the line of demarcation and the reasons for the difference. See *supra*, pp. 28–31.

d. Waialua also relies on a footnote (br., pp. 56–7) in this Court's decision in *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 766, n. 15, in which it was pointed out, "although not relevant [there]," that the exemption includes an additional requirement that the practices be incidental to "such" (the employer's own) farming. The gist of this footnote was that processing is not incidental to or in conjunction with "such" farming if the crop was produced by other farmers. In making this point, the opinion states that the processing in that situation "is incidental to or in conjunction with the farming operation

of the other farmers and not incidental to or in conjunction with the farming operation of the farmer on whose premises the processing is done."

We do not believe, however, that such an inadvertent collateral remark made in the course of a dictum on another point, which was itself described as "irrelevant," can be blown up, by the tenuous process of negative inference, into any substantial support for the conclusion that, if the crop is produced by the processor, then processing it is necessarily "incidental to or in conjunction with" the employer's farming. Indeed, the very case cited by the Court in that footnote—*Bowie* v. *Gonzales*, 117 F. 2d 71 (C. A. 1)—held that the work of mill and railroad employees was not incidental to or in conjunction with the employer's farming, whether or not the processing was limited to crops produced by the same employer. And the whole text of the *Farmers Irrigation* opinion makes it plain that there are important other considerations and conditions (*supra*, pp. 24–27). This provision of the exemption, as that opinion explicitly points out, was not designed to exempt separately-organized *off the farm* operations. Apart from incidental practices performed *by a farmer*, its purpose was to exempt only "*on the farm*" operations, such as wheat threshing, even though performed as a separately organized function:

> * * * As originally introduced, the exemption covered such [incidental] practices

> only if performed by a farmer. On the floor of the Senate it was objected that this would exclude the threshing of wheat or other functions necessary to the farmer if those functions were not performed by the farmer and his hands, but by separate companies organized for and devoted solely to that particular job. To take care of the situation the words "or on a farm" were added to the definition. Thus, the wheat threshing companies, even though they were separate enterprises, were included in the exemption because their work was incidental to farming *and was done on the farm*. In the face of this careful use of language, we are required to limit the exemption as Congress intended it should be limited, to practices performed by a farmer or on a farm * * * [emphasis added, 337 U. S. at 767].

The *Farmers Irrigation* decision itself demonstrates that a separately-organized function—even such an "indispensable prerequisite for agricultural production" with such "immediacy of the connection" to cultivation as irrigation (337 U. S. at 759, n. 6)—is not within the exemption if performed *off the farm*.

4. Waialua's brief in opposition in No. 357 erroneously states that the views of the Department of Labor with respect to the interpretation of the agriculture exemption "represent a sharp departure from principles long followed by the Department" (br. in opp. p. 19, n. 14). In fact,

however, the present views were adopted long before this case arose, and represent long-standing positions of the Department. Counsel for the company rely on a provision of an Interpretative Bulletin issued in 1939. But, as Waialua's brief itself notes (br. p. 62), in September 1941 the Administrator of the Wage and Hour Division issued a press release (1942 Wage Hour Manual p. 408), stating that in the light of the decision in *Bowie* v. *Gonzalez,* 117 F. 2d 11 (C. A. 1), it appeared "that the exemption for agricultural employees provided by the Wage and Hour Law does not apply to sugar mill employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner on his own field," and that "the Wage and Hour Division went too far in expressing" such view in Interpretative Bulletin No. 14, issued in 1939. Thus, this view of the Administrator was adopted *six years* before the institution of this suit in 1947.

Other modifications relating to transportation of the sugar cane on the main line railroad were adopted in 1943 to accord with the decision in *Calaf* v. *Gonzalez,* 127 F. 2d 934 (C. A. 1). These were also adopted long before this action was begun. During a proceeding of the Industry Committee incident to the approval of the Wage Order Part 635, for the Sugar and Related Products Industry, 8 F. R. 7098, 1944–45 WH Manual 347, the Administrator, in

his findings and opinion dated May 20, 1943, specifically called attention to the decision in *Calaf* v. *Gonzalez*. He construed it as holding the section 13 (a) (6) exemption "inapplicable to employees engaged in transporting sugar cane from their employer's farm to their employer's sugar mill, even though the cane was grown by the employer of the employees in question." Since Waialua, as a member of the Hawaiian Sugar Planters Association, was represented at the hearing, it appears that the company had notice of this change.[6]

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[6] There was at that time no requirement, such as now exists under the Administrative Procedure Act (c. 324, § 3, 60 Stat. 237, 238, 5 U. S. C. 1002b), that such changes be published in the Federal Register.

Further indication that the Department's position was adopted long before this litigation was contemplated is to be found in an unpublished letter written by William B. Grogan, acting for the Administrator, to Mr. Paul E. Guillot, Dugas and Le Blanc, Ltd., Paincourtville, Louisiana, dated November 26, 1942:

"It appears that you already have a copy of Interpretative Bulletin No. 14. The first 13 paragraphs of that bulletin set forth the Administrator's interpretation of the scope of section 13 (a) (6) of the Act. However, the recent decision of the United States Circuit Court of Appeals in *Calaf* v. *Gonzales*, 127 F. 2d 934 (C. A. A. 1), indicates that the mere fact that owners of sugarcane farms are also owners of a sugar mill and transportation facilities does not make transportation of the cane from the farms to the mill 'incident to farming' and therefore exempt under section 13 (a) (6). Therefore, your employees engaged in transporting cane from the fields to the mill are not exempt under section 13 (a) (6) of the Act. Except for the qualification just referred to, I believe that the first 13 paragraphs of bulletin

Waialua's brief asserts that these changed interpretations, even though issued in the early years of the Act's operation and long before this litigation began, are not persuasive or entitled to weight because not "contemporaneous construction" (br. p. 62). But surely an administrative interpretation is not deprived of weight because revised to reflect subsequent judicial decisions. As this Court and the Administrator himself have repeatedly cautioned, "the Fair Labor Standards Act puts upon the courts the independent responsibility of applying *ad hoc* the general terms of the statute" (*Kirschbaum Co.* v. *Walling,* 316 U. S. 517, 523), and the Administrator's interpretations, while entitled to great weight, "are not, of course, conclusive, even in the cases with which they directly deal" (*Skidmore* v. *Swift & Co.,* 323 U. S. 134, 139). The Administrator has consistently warned, in the announcement of his interpretations, that they "serve only to indicate the construction of the law which will guide the Administrator in the performance of his administrative duties unless he is directed otherwise by authoritative ruling of the courts or

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14 will enable you to determine which of your employer's employees are engaged in 'agriculture' and therefore within the scope of the section 13 (a) (6) exemption, and thus exempt from both the minimum wage and overtime provisions of the Act."

That this letter may not have come to Waialua's attention prior to this litigation does not mean that it is any the less an accurate representation of the Administrator's interpretation, even at that early date

unless he shall subsequently decide that his prior interpretation is incorrect."[7]

In this connection, we note the very pertinent statement by Chief Judge Learned Hand in upholding a similarly changed administrative interpretation under the Agricultural Adjustment Act in the case of *Dairymen's League Cooperative Association* v. *Brannan*, 173 F. 2d 57 (C. A. 2), certiorari denied, 338 U. S. 825. Judge Hand observed that the original administrative interpretation was issued "at a time when, in the nature of things, interpretation was tentative, or, if it was not, ought to have been. * * * We are satisfied that the second thought of the Administrator was better than his first; and we do not feel bound to accept the early ruling." 173 F. 2d at 65–66.

5. The sweeping interpretation of the agriculture exemption by the Ninth Circuit is not only contrary to long-standing judicial construction of this particular exemption but, as noted above, is premised on a basically erroneous view of the Act. The decision below simply ignores the well settled principles, repeatedly emphasized by this

[7] See, for example, Interpretative Bulletin No. 5, reissued as revised Nov. 27, 1939, "Further Statement as to Coverage of the Fair Labor Standards Act of 1938" (1940 Wage Hour Manual 131). See also Interpretative Bulletin No. 1, "General Statements as to Coverage of the Fair Labor Standards Act of 1938," first issued Sept. 22, 1938 (1940 Wage Hour Manual 129). For more recent reiterations of this caution, see 12 F. R. 4583, 29 CFR, c. V, Sec. 776.0; 15 F. R. 2925, 29 CFR, 1953 Supp., c. V, Sec. 776.0.

Court, that the coverage of this Act, in view of its broad remedial purpose "to eliminate * * * substandard labor conditions throughout the nation" and the statement of its scope "in terms of substantial universality," must be broadly construed; and "any exemption" narrowly construed and limited to those "plainly and unmistakably within its terms and spirit." *Powell* v. *U. S. Cartridge Co.*, 339 U. S. 497, 510, 516–17; *Phillips Co.* v. *Walling*, 324 U. S. 490, 493; *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 617.

Taking an approach diametrically opposite to this Court's declaration of the broad remedial purpose of the Act for which "Breadth of coverage was vital to its mission" (*Powell* v. *U. S. Cartridge Co.*, 339 U. S. at 516), the Court of Appeals has construed the *exemption* as "remedial" legislation for "the protection to the growers" and emphasized the "breadth of the exclusion of agricultural workers" (R. 730–731). Proceeding on the assumption that "the policy of protection to the growers" implicit in the exemption "is of as much force as that of the protection of general industrial workers" (R. 730), the court concluded that the principle of strict construction of exemptions has no application to interpretation of the agriculture exemption. This fallacious premise, together with the court's equally incorrect ruling that the regulation of agriculture is beyond the scope of the constitutional power of Congress, explains the sweeping decision that not

only workers engaged in farming but all of Waialua's employees engaged in industrial occupations are within the agriculture exemption. The court thus denied both the minimum wage and the overtime benefits of the Act to all of these employees, and found it unnecessary to decide whether any of them might be exempt only from the overtime requirements of the Act under section 7 (c). See Point III, *infra.*

III

The Section 7 (c) overtime exemption for "processing" sugarcane does not extend to employees engaged in repairing and maintaining the sugar mill machinery during the off season, or in operating and maintaining the mainline railroad, or in carrying on comparable activities

Section 7 (c) provides that "In the case of an employee engaged * * * in the *processing* of * * * sugarcane * * * into sugar (but not refined sugar) * * * [the overtime provisions of the Act] shall not apply to his employees in any *place of employment where he is so engaged*" [emphasis added]. This exemption was held by the trial court to be applicable to "the work of employees which takes place in the mill, in connection with the operation of processing machinery and activities closely and intimately connected therewith" (R. 798); and to the work of employees engaged in repair and maintenance activities in the mill during the weekend shutdown (R. 798); but not applicable during the three

months "off season" (R. 801) when the mill is not in operation.[8]

Waialua asserts that the processing exemption is applicable, in addition, to the employees who operate the mainline railroad in transporting sugarcane from the fields to the mill, to employees who repair and maintain the railroad facilities, to employees who repair and maintain mill equipment during the "off season," and to employees who perform such other operations as generating electricity for covered nonexempt uses (br., p. 64).

The Secretary believes that the trial court correctly construed the exemption in accordance with the terms of the statute and the prior judicial decisions.

1. On its face, section 7 (c) is applicable, *first*, only in the case of an employer engaged in a described operation (in the instant case, processing of sugarcane), and, *second,* only as to those of his employees who work in a *"place of employment where he is so engaged"* [emphasis added]. The exemption is not coextensive with *all* of the activities undertaken by an employer who, *inter alia,* engages in the processing of sugarcane. To be within the exemption, the employees must be engaged in the operations described in section 7 (c) (*i. e.*, processing of

[8] The Ninth Circuit found it unnecessary to rule on this question because of its decision that section 13 (a) (6) exempted all Waialua employees (R. 746).

sugarcane), or in operations that are a necessary incident to the described operations and, in addition, they must be working *in* the "place" where their employer is engaged in such processing. On the other hand, the terms of section 7 (c) do not include employees who work in a "place of employment" where their employer is *not* engaged in the actual processing of sugarcane, although the activities at that place may be, in a broad sense, incidental or necessary to such processing.

Waialua argues (br., p. 67) that the "place of employment where it is so engaged" can include its "entire premises." But the "entire premises" covers 9,663 acres (R. 33) on which Waialua functions both as a farmer and a processor, as well as performs various supporting activities (R. 721, 723). The same reasons advanced in Point II to demonstrate that this entire acreage is not a "farm" (*supra*, pp. 25–27, 36–37) make it equally clear that the entire premises cannot reasonably be deemed the "place" where Waialua is engaged in the processing of sugarcane. The company's contention reads out of the exemptive provision the phrase "where he [i. e. the employer] is so engaged" which seems clearly intended to limit the exemption to employees working "in" the particular "place" in which the employer is actually engaged in processing operations. Employees in the mill engaged exclusively in processing sugarcane into raw sugar, of course, come within the exemption. In

a case where several contiguous buildings or areas located on the same premises and operated as a unitary establishment *devoted to the described operations* constitute a single "place of employment," the entire set of buildings or areas are a "place of employment where he is so engaged." On the other hand, where only certain departments, areas, or buildings within an employer's premises are devoted to the described operations, the remaining departments, areas, or buildings cannot be deemed to be part of such "place of employment" without doing violence to the statutory language and the firmly established rules of statutory contruction.

These views are fully supported by an early decision in *Fleming* v. *Swift*, 41 F. Supp. 825 (N. D. Ill., Nov. 1941), affirmed, 131 F. 2d 249 (C. A. 7), which is the judicial authority most directly in point on this issue. The Swift Company was engaged in acquiring and slaughtering livestock and in the processing, manufacturing, and distributing of meat, meat products, and by-products from livestock. Concluding that the description of operations and processes in section 7 (c) places "a functional limitation on the classes of employees for whom an exemption from the overtime provisions may be claimed," the court held that the exemption applied on a department basis and not to defendant's whole plant. (41 F. Supp. at 831.) Thus, the court carved out for exemption only those departments of the meat-

packing plant in which "handling," "slaughtering," and "dressing" operations were performed and held that the portions of the plant devoted to those operations constituted the "place of employment," and that employees in other departments (such as those devoted to meat-curing or sausage-making) were not within the scope of the exemption. To the same effect, see *Colbeck* v. *Dairyland Creamery Co.*, 70 S. Dak. 283, 17 N. W. 2d 262; *Walling* v. *De Soto Creamery & Produce Co.*, 51 F. Supp. 938 (D. Minn.).

2. Waialua oversimplifies the problem when it argues (br., p. 68–69) that if the railroad employees are engaged in operations incident to processing, rather than to farming, then they are necessarily exempt under section 7 (c).[9] Even

[9] Waialua incorrectly asserts that the decisions of the First Circuit (citing *Bowie* v. *Gonzalez*, 117 F. 2d 11, and *Calaf* v. *Gonzalez*, 127 F. 2d 934) assumed that transportation was exempt under section 7 (c). (See Waialua br., p. 68.) Nothing in the court's opinions warrants this conclusion. The *Bowie* case was a suit by the employer for a declaratory judgment that the complete exemptions in sections 13 (a) (6) and 13 (a) (10) applied. The opinions of the district court (*Bowie* v. *Claiborne*, D. P. R. 1939, 1 W. H. Cases 243, 1 Labor Cases (C. C. H.) ¶18, 443, not officially reported), the appellate court, and the disposition of the case do not involve any such assumption as that claimed by Waialua. Only the appellate opinion is published in the *Calaf* case. It certainly contains no express assumption of the type now asserted, and there is nothing to indicate that any overtime hours were worked or overtime compensation sued for, so as to involve any implied assumption as to section 7 (c) in the award of minimum wages. Neither was the problem discussed or decided, even by implication, in *Vives* v. *Serralles*, 145 F. 2d 552

assuming that they all are so engaged, the question still remains whether they work at a "place of employment" where their employer is engaged *in* processing operations. Clearly, most of the railroad employees do not. The train crews (R. 62), section men (R. 62), and crossing watchmen (R. 63), work all along the mainline which comprises some 56 miles of track (R. 60) and borders the entire ocean perimeter of the company's land (R. 721). The hostler and engine wiper perform their work in the plantation roundhouse (R. 63), well removed from the mill (R. 723).

The same considerations are applicable to the repair and maintenance shops. They are located in separate buildings not connected with the mill where processing takes place (R. 723). Besides, those services are not principally for the processing activity, and therefore may not be considered incidental to it. While the percentage varies from shop to shop, the other activities of Waialua account for a majority of the work in each shop. It would appear that a very small, if not negligible, proportion of the work of the cane loading machine repair shop (R. 97–8), the tractor repair shop (R. 98–9), and

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(C. A. 1). The suits of all of the employees but one were dismissed under section 13 (a) (6), and the remaining employee, though held to be exempt from overtime compensation under section 7 (c), was employed in the sugar mill and not on the railroad; in that case, too, no assumption as to the application of section 7 (c) to transportation is involved even by implication.

the tinsmith shop (R. 97), was done for the mill. Only in the electric shop (R. 101) does the proportion equal 50 percent, and even here there is no indication that the work for the mill was segregated in any way (R. 213–216).

3. One of the employees whose status under section 7 (c) is in issue operated the electric generator in the power house (R. 218–220) which supplied electric power for "operations throughout the plantation" (R. 218); this included, of course, the covered and nonexempt railroad, roundhouse, and office (R. 91, 723). Another operated the machinery in the fireroom which produced the steam both to power the electric generator and for use in the mill (R. 216–218).

Even if these employees are regarded as being employed in the "place" where their employer is engaged in processing sugarcane into raw sugar, because that is done in other rooms in the same building (R. 723), the district court was correct in holding the section 7 (c) exemption inapplicable. This is because the duties of these employees included the production of electric power for covered activities of their employer not excluded by this or any other exemption from the overtime compensation provisions of the Act. Where exemptions have been provided for "any employee" of a designated type of employers, the courts have held that, if the employer engages in activities in addition to those which bring him within the exemption, em-

ployees who have duties relating to the non-exempt as well as the exempt phase of the business are not exempt, despite the literal wording of the exemptive clause. Otherwise, an employer within such an exemption could engage in many assorted businesses and claim exemptions for all his employees because one of the businesses happened to be described in section 7 (c) or 13.

Specifically with respect to section 7 (c), courts have held that employees like those engaged here in the production of steam and electric power are not within the exemption. In *Walling* v. *Bridgeman-Russell Co.*, 2 W. H. Cases 785, 6 Labor Cases (C. C. H.) ¶61,422 (D. Minn., 1942, not officially reported), the court was concerned with the application of the exemption in section 7 (c) for "an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products * * *." It was held that the "Section 7 (c) [exemption] does not exempt industries from the overtime provisions of the Act, but only the specific processes therein mentioned," and accordingly that the exemption did not apply to employees, in the same place of employment, who made the steam and generated the power used exclusively for operating equipment and heating and lighting the building where activities described in the exemption and also other related activities not so described were carried on. *Shain* v. *Armour & Co.*, 50 F. Supp. 907 (W. D. Ky.) also arose under the same portion of section 7 (c)

and likewise involved the application of the exemption to "employees engaged in producing steam, heat and power" for exclusive use in the same building in activities specified in the exemption and related activities not so described. The court held the exemption inapplicable because "Section 7 (c) of the Act does not exempt industries as a whole from the overtime provisions of the Act, but only those specific processes therein mentioned" [50 F. Supp. at 911].

The same principle has been applied to the other so-called "employer" exemptions in the Act. *Walling* v. *Connecticut Co.*, 154 F. 2d 552 (C. A. 2), involved employees engaged in the production of electric power for use by their employer in his exempt business as electric railway carrier. Though section 13 (a) (9) exempts "any employee" of such an employer, it was held not to apply to these employees because the power they produced was used in operating nonexempt instrumentalities of interstate commerce as well as the exempt electric railway. Another instance in which a court refused to apply the literal terms of an exemption because to do so would produce a result not fairly within its purpose is the decision of the Eighth Circuit in *Northwest Airlines* v. *Jackson*, 185 F. 2d 74, certiorari denied, 342 U. S. 812. There, the exemption in section 13 (b) (3) for "any employee of a carrier by air" was held not to apply to employees of such a carrier whose duties related to modification of

planes for the Government. Similarly, in *Davis* v. *Goodman Lumber Co.*, 133 F. 2d 52 (C. A. 4), the exemption in section 13 (a) (2) for "any employee employed in any retail or service establishment * * *" was ruled inapplicable to employees working in the manufacturing phase of the employer's retail establishment. To the same effect, see *Wabash Radio Corp.* v. *Walling*, 162 F. 2d 391 (C. A. 6); *Western Union Telegraph Co.* v. *McComb*, 165 F. 2d 65 (C. A. 6), certiorari denied, 333 U. S. 862, *Nelson* v. *Agwilines*, 70 F. Supp. 497 (S. D. N. Y.).

So here, the use of part of the power produced by Waialua's employees in covered and non-exempt railroad and office activities makes the section 7 (c) exemption—restricted to processing sugarcane—inapplicable to these employees.

4. The district court also properly held section 7 (c) inapplicable to employees engaged in mill repair and maintenance work during the "off season," a period of approximately three months each year when processing operations have been definitely suspended and major maintenance and repair activities are undertaken.

While employment in the "place" where the processing is carried on is a necessary condition to the applicability of the exemption, the words "place of employment" are not controlling in themselves. The language is clear that the exempt employees must be employed in a "place" where the employer "*is*" engaged in one of the

processing operations. It is not enough that the "place" is devoted to activities related in some way, or necessary, to processing which may ultimately take place; it is essential that at the time these activities occur the employer *is* engaged in processing. During the "off season," however, when processing operations are completely suspended for a period of three months, it is stretching the statutory language considerably to conclude that the processing operations *are* being engaged in by the company at that time.

The First Circuit only recently reached this conclusion with respect to a similar exemption in *Mitchell* v. *Stinson,* 217 F. 2d 210, 217 (C. A. 1). It concluded that the section 13 (b) (4) exemption for employees "employed in * * * canning" was not applicable to employees employed during the dead season because they "are not parts of the canning process." And in *Maisonet* v. *Central Coloso, Inc.,* 2 W. H. Cases 753, 6 Labor Cases (C. C. H.) ¶61,337 (D. P. R.) (not officially reported) the issue was squarely presented whether employees at a mill processing cane into raw sugar were entitled to receive overtime pay during the dead season. The court held the exemption inapplicable since the employer was not engaged in processing at that time. It noted that the economic conditions with which section 7 (*c*) is supposed to be concerned do not obtain during the dead season, and that the mill could easily spread employment sufficiently during that

period so as to avoid the necessity of overtime work. To the same effect, see *Heaburg* v. *Independent Oil Mill*, 46 F. Supp. 751, 753–754 (W. D. Tenn.), in which the court pointed out that "the 'dormant' season activities * * * such as maintenance, repair, clerical and sales work, while incidental to and connected with the defendant's business of the 'processing of cottonseed' is not 'processing' within the intent of the Act and is not sufficient to bring the employer within the exemption 7 (c) during such period." See also *Abram* v. *San Joaquin Cotton Oil Co.*, 49 F. Supp. 393 (S. D. Calif.).

As in the cases cited above, Waialua's three-month "off season" is a period devoted to repair and maintenance work on a vast scale, designed to safeguard its capital investment and for the installation of improvements (R. 763), as well as to insure the uninterrupted functioning of the mill during the harvest season. The assertion by the company (br., p. 65) that section 7 (c) "exempts without time limit" is not inconsistent with our position that "off season" work is nonexempt, for it is clearly implicit in the exemption that it is based on, and limited by, the premise that processing operations are being conducted during the entire period. If they are, then the exemption is an "absolute" year-around one. But where, as here, they are not, then the exemption is applicable, in the language of the

provision, only during such seasons as the employer *is* engaged in processing.

IV

When in the same workweek an employee performs work exempt under either section 13 (a) (6) or section 7 (c) and also covered nonexempt work, he should receive the minimum wage and overtime benefits of the Act

Finally, the Government submits that the trial court correctly held that an employee is entitled to the minimum wage and overtime benefits of the Act for work performed in any workweek in which he performs both exempt and covered nonexempt work (R. 819). The Court of Appeals also considered it "immaterial" to rule specifically on this question (R. 746), because of the sweeping scope it gave to the section 13 (a) (6) agricultural exemption.

Waialua's contention that Congress intended the exemption to apply to an employee in any workweek in which he does not devote a *substantial part* of his time to an activity not exempt (br., p. 83) ignores the decided cases and the established principle of strict construction of exemptions from the coverage of this Act. See *supra*, pp. 23–24, 45–46. Its related contention that a denial of tolerance for nonexempt work defeats the purpose of the exemption (br., p. 84) is particularly untenable inasmuch as the exemptions themselves state both the type of work for which the exemption is designed and a tolerance for related work. Sections 13 (a) (6) and 7 (c)

exempt not only those directly engaged in the operations specifically mentioned, but also others whose work is "incident to or in conjunction with" such operations (section 13 (a) (6)) or who perform incidental work in the same place of employment (section 7 (c)). There is, therefore, no occasion to broaden these exemptions by a further tolerance allowance.

1. The problem has frequently arisen, as in the instant case, where both exempt and nonexempt activities are involved. In cases in which exemptions depend on the particular duties performed by employees, the performance of both exempt and nonexempt activities by an employee in the same workweek has consistently been held to result in the loss of the exemption. *McComb* v. *Puerto Rico Tobacco Marketing Co-op Assn.*, 80 F. Supp. 953 (D. P. R.), affirmed 181 F. 2d 697 (C. A. 1); *Mitchell* v. *Stinson*, 217 F. 2d 210 (C. A. 1); *North Shore Corp.* v. *Barnett*, 143 F. 2d 172 (C. A. 5); *Walling* v. *W. D. Haden Co.*, 153 F. 2d 196 (C. A. 5), certiorari denied, 328 U. S. 866; *Anderson* v. *Manhattan Lighterage Corp.*, 148 F. 2d 971 (C. A. 2), certiorari denied, 326 U. S. 722; *McComb* v. *Del Valle*, 80 F. Supp. 945, 951 (D. P. R.); *Shain* v. *Armour & Co.*, 50 F. Supp. 907 (W. D. Ky.); *Walling* v. *DeSoto Creamery & Produce Co.*, 51 F. Supp. 938, 943 (D. Minn.); *Fleming* v. *Swift & Co.*, 41 F. Supp. 825 (N. D. Ill.) affirmed, 131 F. 2d 249 (C. A. 7); *Walling* v. *Peacock Corp.*, 58 F. Supp. 880, 883

(E. D. Wis.); *Sykes* v. *Lochmann,* 156 Kan. 223, 132 P. 2d 620, certiorari denied, 319 U. S. 753; *Jordan* v. *Stark Bros. Nurseries,* 45 F. Supp. 769 (W. D. Ark.); *Walling* v. *Bridgeman-Russell,* 2 W. H. Cases 785 (D. Minn.), 6 Labor Cases (C. C. H.), ¶61,422 (not officially reported); *Loeb* v. *Ideal Packing Co.,* 7 Wage Hour Rept. 397, 8 Labor Cases (C. C. H.) ¶62,150 (Wis., C. C. Mil. Co., 1944); *Gaskin* v. *Clell Coleman & Sons,* 5 Wage Hour Rept. 581 (Ky. C. C., Mercer Co., 1942).

The operation of this rule in a case involving section 7 (*c*) is well illustrated by *Shain* v. *Armour & Co., supra.* Although the major part of the plant's activities were devoted to the processing of butter and the employer therefore contended that all of his employees were exempt, only those employees "as devote their time *exclusively* to the first processing of cream into butter" were held to be within the exemption (6 Wage Hour Rept. 715, 716). [Emphasis added.] The court specifically denied the exemption to employees who "devote part of their time during the workweek to duties other than the first processing of cream into butter" (*ibid.*). Similarly, in *Walling* v. *Bridgeman-Russell, supra,* section 7 (*c*) was held applicable only to employees "who perform exclusively the operations described in this Section" (2 W. H. Cases at 790), and, once again, the exemption was expressly denied if "during any part of the workweek, the employee

performs duties which do not fall within the scope of the exemption" (*ibid.*).

To the same effect, in cases involving section 7 (c) and section 13 (a) (6) exemptions, see *McComb* v. *Puerto Rico Tobacco Marketing Coop. Assn., supra; McComb* v. *Del Valle, supra; Fleming* v. *Swift & Co., supra; Jordan* v. *Stark Bros. Nurseries, supra; Walling* v. *DeSoto Creamery & Produce Co., supra; Walling* v. *Peacock Corp., supra; Sykes* v. *Lochmann, supra;* and *Loeb* v. *Ideal Packing Co., supra.* For similar rulings with respect to other exemptions, see *Mitchell* v. *Stinson,* 217 F. 2d 210, 217 (C. A. 1) (employees engaged in "canning" within the meaning of section 13 (b) (4), who also were engaged in the nonexempt work of bus driving); *North Shore Corp* v. *Barnett,* 143 F. 2d 172 (C. A. 5) (employee engaged as telephone switchboard operator within meaning of section 13 (a) (11), who also performed other duties of a nonexempt nature); *Anderson* v. *Manhattan Lighterage Corp.,* 148 F. 2d 971 (C. A. 2), certiorari denied, 326 U. S. 722. See also *Wabash Radio Corp.* v. *Walling,* 162 F. 2d 391, 394 (C. A. 6).

Thus, the courts have recognized that if more than lip service is to be paid to the principle that "any exemption from [this] humanitarian and remedial legislation must * * * be narrowly construed" and not extended "to other than those plainly and unmistakably within its terms and spirit" (*Phillips Co.* v. *Walling,* 324 U. S. 490,

493), exemptions cannot be extended to an employee or an employer simply because he engages in some exempt work, if he also engages in other work which Congress clearly subjected to the statutory standards. Any other interpretation would open the door wide to evasion of the purpose of the Act to eliminate substandard labor conditions. It would result in absorbing into the exemptions parts of industries and activities plainly covered by the Act, solely because the same employees or employers happened to engage in several kinds of activities. Such a result would largely defeat the "Breadth of coverage" of this Act which is "vital to its mission" (*Powell* v. *U. S. Cartridge Co.*, 339 U. S. 497, 516).

2. The position taken by the courts in the foregoing cases and by successive administrations over a period of years (see Interpretative Bulletin No. 14, par. 37, p. 22) accords with the evident purpose of Congress in defining with extraordinary particularity the scope of the exemptions. Congress did not merely exempt, by section 13 (a) (6), employees "employed in agriculture." It went further, and, in section (3) (f) gave a very detailed definition of agriculture which included not only traditionally agricultural activities but also "any practices * * * performed by a farmer or on a farm as an incident to or in conjunction with such farming operations." This language in itself provides a substantial tolerance for activities which are not of a strictly agricul-

tural nature. In addition, Congress provided other exemptions for related processing activities in sections 7 (c) and (13) (a) (10). The legislative history indicates that these exemptions were considered together and were intended to be a comprehensive and exclusive list of the activities in this field which Congress desired to exempt. As the courts have also emphasized, all the sections relating to these exemptions "are in *pari materia* and must be construed together to form a consistent whole, if possible." *Bowie* v. *Gonzalez,* 117 F. 2d 11, 17 (C. A. 1). There is no room for additional tolerances and exemptions.

3. The situations cited by Waialua where the Administrator has allowed a tolerance for nonexempt work are distinguishable from those presented by sections 7 (c) and 13 (a) (6), involved in this case. The instances collected in footnote 1 in Appendix E to Waialua's brief (p. 104) deal with section 13 (a) (1) which expressly grants the Administrator the power to define by regulation certain exempt classifications which are identified in the Act only in the most general terms. As the tolerances are expressly provided in the regulation, no question of judicial interpretation is presented.

The other exemptions cited by Waialua, where the Administrator has allowed and the courts have approved a tolerance for nonexempt work, are cases in which the exempt occupation is designated only by an undefined word, or phrase,

rather than by a precise definition such as is provided in section 3 (f) and in section 7 (c). It was felt that those exemptions were intended to apply to the typical situations or employees designated by Congress and that the related activities normally found in those situations and occupations should not be regarded as defeating the exemptions. Thus, section 13 (a) (2), cited in Waialua's brief (fn. 52, p. 83), exempts employees employed in a "retail * * * establishment." Such establishments generally make a few non-retail sales. A tolerance has therefore been held appropriate. This explains the decisions in *Northwestern-Hanna Fuel Co.*, v. *McComb*, 166 F. 2d 932 (C. A. 8); *Harris* v. *Hammond*, 145 F. 2d 333 (C. A. 5), certiorari denied, 324 U. S. 859; and *Brown* v. *Minngas Co.*, 51 F. Supp. 363 (D. Minn.).

In short, the Department is of the view that the tolerance specifically provided by the particularized language of the agricultural exemptions need not be broadened to accomplish the purposes of these exemptions, whereas the tolerances permitted under certain other sections of the Act are necessary to give substance to those exemptions.

CONCLUSION

The present status of this case is that the counterclaim of the employees has been "left undismissed," but the judgment of the trial court on the merits in their favor has been reversed by the Court of Appeals and the cause remanded "for proceedings in accordance with the opinion of this court" (R. 746–7). And the "opinion of this court" states in no uncertain terms the appellate court's view that the employees' claims should be rejected on the merits, so that there would seem little point either in this Court's remanding the case to the Ninth Circuit with directions "to review on the merits the important issues of statutory construction," as has been suggested by the employer (No. 358, Petition, p. 12), or in allowing the case to go back to the District Court to enter judgment in accordance with the unequivocal views on the merits expressed by the Court of Appeals. Whether or not the issues of statutory construction were technically decided by the decision below, those issues are necessarily presented if the decision is reversed on the jurisdictional issue, as the petitioner in No. 358 urges. To refer the issues on the merits to the Ninth Circuit again would, therefore, serve no purpose except unnecessarily to prolong this already too prolonged litigation, which has been going on for over seven years, having been before both the trial court and the Court of Appeals twice already.

For the above reasons, it is respectfully submitted that the decision and judgment of the Court of Appeals should be reversed and that of the District Court reinstated.

Respectfully submitted.

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FEBRUARY 1955.

APPENDIX

The pertinent provisions of the Fair Labor Standards Act of 1938, c. 676, 52 Stat. 1060, are:

> SEC. 3. As used in this Act—
>
> * * * * *
>
> (f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15 (g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with

such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

* * * * *

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

* * * * *

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

* * * * *

(3) for a workweek longer than forty hours * * * unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

* * * * *

SEC. 7. * * * (c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of

subsection (a) shall not apply to his employees in any place of employment where he is so engaged; * * *

* * * * *

SEC. 13. (a) The provisions of sections 6 and 7 shall not apply with respect to * * * (6) any employee employed in agriculture * * * or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products * * *.

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Nos. 357 and 358

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v.

WAIALUA AGRICULTURAL COMPANY, LIMITED

WAIALUA AGRICULTURAL COMPANY, LIMITED,
PETITIONER,

v.

CIRACO MANEJA, ET AL.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF ON BEHALF OF THE SECRETARY OF LABOR AS AMICUS CURIAE IN RESPONSE TO BRIEF FILED BY THE AMERICAN FARM BUREAU FEDERATION

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v.

CIRACO MANEJA, ET AL.

MOTION ON BEHALF OF SECRETARY OF LABOR TO FILE BRIEF AS AMICUS CURIAE IN RESPONSE TO BRIEF FILED BY THE AMERICAN FARM BUREAU FEDERATION

The Solicitor General, on behalf of the Secretary of Labor respectfully moves for leave to file the attached supplemental brief as *amicus curiae* in response to the brief filed by the American Farm

Bureau Federation as amicus curiae, for the following reasons:

1. Neither the Solicitor General nor the Secretary of Labor received a copy of the brief of the American Farm Bureau Federation prior to the oral argument on March 30, 1955, and therefore were not informed of its content at the time of the oral argument. The motion of the Farm Bureau Federation for leave to file the brief was granted on March 28, 1955, and Government counsel was unaware that the brief had actually been filed until reference was made to it at the oral argument. A copy was secured from the Clerk by Government counsel the day following the oral argument.

2. The brief of the American Farm Bureau Federation places considerable emphasis on certain paragraphs of Interpretative Bulletin No. 14, issued in August 1939. It asserts (pp. 15-21) that the Department of Labor "has consistently held all activities in question to be exempt under Section 13(a)(6)", and that farmers have relied upon these views for the 17 years since the Act has gone into effect. The main interpretation in issue in the instant cases, however, was modified as early as 1941, and such modification was widely publicized at the time, and was brought to the attention of interested parties on various and frequent occasions since that date. The brief of the American Farm Bureau Federation makes no reference to the modification or the publicizing of the modi-

fied interpretation. In order to appraise accurately the asserted reliance of farmers upon the interpretation of the Labor Department, the Court should be advised of the facts.

Respectfully submitted,

SIMON E. SOBELOFF,
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APRIL 1, 1955.

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Nos. 357 and 358

In the Supreme Court of the United States

OCTOBER TERM, 1954

CIRACO MANEJA, et al., PETITIONER

v.

WAIALUA AGRICULTURAL COMPANY, LIMITED

WAIALUA AGRICULTURAL COMPANY, LIMITED, PETITIONER

v.

CIPACO MANEJA, et al.

SUPPLEMENTAL BRIEF FOR THE SECRETARY OF LABOR AS AMICUS CURIAE IN RESPONSE TO BRIEF FILED BY THE AMERICAN FARM BUREAU FEDERATION

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I.

The American Farm Bureau Federation's brief as *amicus curiae* emphasizes even more than the Waialua brief the contention that the Labor Department's interpretation of the agricultural ex-

emption, prior to this suit, required exemption of the employees involved here, and were generally relied upon by farmers during all the years since the passage of the Fair Labor Standards Act. Because of this emphasis, a more extensive explanation of the history of the administrative interpretation seems now to be necessary.

1. Relying solely on Interpretative Bulletin No. 14 (1939), the Farm Bureau's brief neglects to mention the important modification of this bulletin with respect to manufacturing and transportation operations carried on as separate and distinct functions by growers of agricultural crops. In particular, modifications were made specifically in the interpretations regarding manufacturing and transportation operations carried on by sugar cane growers, and these modified interpretations have been long-standing and well known to the industry. They were also specifically brought to the attention of the legislative committee considering the comprehensive amendments to the Fair Labor Standards Act in 1949, and were left unchanged by those Amendments although many other changes were made in various administrative interpretations of the Act at that time.

a. On September 15, 1941, the Department of Labor issued a press release (published in the 1942 Wage Hour Manual, page 408), stating that the particular provision relating to sugar manufacturing in Interpretative Bulletin No. 14, on which Waialua places reliance and which is referred to by the American Farm Bureau Federation, should

no longer be relied upon. Referring to the decision of the Court of Appeals for the First Circuit in *Bowie* v. *Gonzalez*, 117 F. 2d 11, the press release stated that it would seem from the Court's decision that "the exemption for agricultural employees provided by the Wage and Hour Law does *not* apply to sugar mill employees *even if the only cane ground in such a mill is cane grown by the sugar mill owner on his own field*," and that "the Wage and Hour Division went too far in expressing the view in Interpretative Bulletin No. 14, relating to exemptions granted to agriculture and the processing of agricultural commodities, that if a sugar mill operator grinds only the cane which he grows himself the exemption for agricultural employees may possibly apply under some circumstances to his mill employees" (emphasis added).

This release was issued over 13 years ago, and some 6 years before the institution of the instant cases. It was given wide circulation and attention was repeatedly called to it in subsequent opinions and interpretations. A copy of the full press release (R-1568) is attached as an Appendix, *infra*.

b. Since the date of the 1941 press release, the Department of Labor has repeatedly, whenever the occasion presented itself, reiterated the position that under the First Circuit decisions the Section 13(a)(6) exemption is not applicable to mill or transportation employees simply by reason of the fact that they are under common ownership with a farm and are used solely to service and process the crops produced on that farm. This position was

explicitly called to the attention of the sugar industry in 1944 during a proceeding incident to the approval of a wage order for the Sugar and Related Products Industry, in response to a proposal by the representative of the *Hawaiian Sugar Planters Association*, of which the Waialua Company is a member. The representative of the Hawaiian Sugar Planters Association proposed that the definition of the industry to which the wage order would be applicable should be modified to exclude "transportation and delivery [to the processor which] is performed by the farmer-producer and his own employees" (Transcript, Industry Committee No. 50 for Sugar and Related Products Industry, p. 10, 69). In rejecting this proposal, the Administrator made this statement regarding the application of the agriculture exemption:

> Whether or not a particular employee engaged in loading or transporting sugar cane from a farm to a mill is to be regarded as "employed in agriculture," as agriculture is defined in Section 3(f) of the Act, and hence exempt from the minimum wage provisions of the Act under Section 13(a)(6), is a question of fact to be determined upon the basis of all the evidence and the applicable rules of law. See Interpretative Bulletin No. 14, paragraphs 1-13. See also the decision of the Circuit Court of Appeals for the First Circuit in the case of *Calaf (Callazo)* v. *Gonzalez*, 127 F. 2d 934, where it was decided that the Section 13 (a)(6) exemption was inapplicable to em-

> ployees engaged in transporting sugar cane from their employer's farm to their employer's sugar mill, even though the cane was grown by the employer of the employees in question. [*Findings and Opinion of the Administrator*, May 20, 1943, p. 5.]

c. In answer to all inquiries made by interested parties and by the regional representatives of the Department of Labor, subsequent to the decisions of the First Circuit, the Department repeatedly and consistently stated that its interpretations would be guided by the First Circuit's decisions in *Bowie* v. *Gonzalez* and *Calaf* v. *Gonzalez*.

Typical of the advice given regional representatives of the Department, which served to guide them in advising interested employers and employees, is this statement contained in a memorandum to the Department's regional attorney whose region included Louisiana, dated November 25, 1941:

> The *Bowie* decision dealt with large scale sugar mill operations which are typical factory operations, and the court held that such mill activities are not incidental to the farming operations conducted by the mill operator. In issuing release R-1568 [quoted *supra* and in Appendix, *infra*], the Administrator wished to make it clear that even though a mill operator grows all the cane ground at his mill, sugar *mill operations* of the type described in the *Bowie* case *are clearly not an "incident to*

> *or in conjunction with" the farming operations of the mill operator* within the meaning of section 3(f), and that the section 13(a)(6) exemption is inapplicable under such circumstances to the mill employees. [Emphasis added].

A copy of this memorandum was sent on December 4, 1941 to the Department's regional attorney in San Francisco, (under whose jurisdiction Hawaii was included) in response to a specific request as to the import of Press Release-1568.[1]

Similarly, typical of the advice given interested parties is this statement from a letter dated October 9, 1946, to Mr. James Marshall, Director, Sugar Branch, Production and Marketing Administration, United States Department of Agriculture,[2] from the Deputy Administrator of the Wage and Hour Division:

---

[1] This memorandum was signed by Mr. Rufus G. Poole, now counsel for Waialua in the instant case, then Assistant Solicitor of the Department of Labor in charge of opinions and review. Cf. the statement in Waialua's reply brief, pp. 27, 28, that the interpretations to which the Department now refers are "some newly devised interpretations contrived to defeat Waialula's position under the circumstances herein."

[2] The interest of the Department of Agriculture derived from its functions under the Sugar Act. Mr. Justice Frankfurter, at the oral argument, raised a question as to the application of the Sugar Act to Hawaii. That Act does apply to Hawaii as well as Puerto Rico. See Waialua Company's reply brief, p. 20, citing references to a number of wage determinations for Hawaii by the Secretary of Agriculture. It may be noted that Waialua purports to find some support in the fact that the Secretary of Agriculture in certain years in the past had

The mere fact that the owner of the sugar centrale also owns a farm would not necessarily mean that transportation from the farm to the mill is "incident to farming" and therefore exempt under section 13(a)(6). In such a situation, it becomes a question of fact whether the truckers are employed by the plantation in work incidental to farming operations, so that they would be exempt under section 13(a)(6), or whether they are employed by the centrale in work incidental to milling operations which would not be exempt. *In deciding this question the Divisions have adopted the tests used* by the court in *Calaf Callazo* v. *Gonzalez*, 127 F. 2d 934. Thus, where the employees are on the farm pay roll, report to the farm for instructions daily and at the end of the day, are generally supervised from the farm, perform agricultural work on the farm and where the trucks are stored and maintained on the farm—these are factors indicating that the employees are performing work which is an incident to the farming operations. *On the other hand, where the employees are on the*

---

fixed wages for some mainline railroad employees. Admittedly, wages have not been fixed by the Secretary of Agriculture for such railroad employees since 1945, and we are advised that the apparent reason why the Secretary ceased to fix such wages was because he concluded he had no such authority under the Sugar Act, which applies to "persons employed on the farm in the production, cultivation, or harvesting." Sugar Act of 1937, 50 Stat. 909, 7 U.S.C. sec. 1131; Sugar Act of 1948, 61 Stat. 929, 7 U.S.C. sec. 1131 (continuing the same provision).

> *mill pay roll, are supervised from and report to the mill, and perform other work at the mill, these factors would indicate that the work of the employees is incidental to the milling operations.* [Emphasis added.]

See also letter to Paul Guillot dated November 26, 1942, quoted in the main brief for the Secretary of Labor, p. 43-44, n. 6.

d. In addition, the views of the Department of Labor were included in published opinions of the National Labor Relations Board in the course of hearings involving the Grower-Shipper Vegetable Association, 35 Wage Hour Manual 369-376. The position of the Department of Labor was summarized in the following excerpts from a letter addressed by the Solicitor of Labor to Senator Hayden dated October 3, 1949 (which was incorporated in the published opinion of the Labor Relations Board):

> Since the decision of the First Circuit in *Bowie* v. *Gonzalez*, 117 F. 2d 11 [1 WH Cases 99] (C.A. 1), and Wage-Hour Division release R-1568, the operation, by the owner of a farm or farms, of a large packing or processing plant of a type operated by non-farmers and having predominately industrial characteristics has not, as a rule, been considered a practice "incident to or in conjunction with" the owner's farming operations. Even though the commodities worked on at such a plant are raised exclusively by the owner, it cannot

> fairly be said in the ordinary case that such plant operations which are characteristic of a nonfarming enterprise are performed as an incident to farming. Equal justification would exist for saying that the farming operations are incident to the plant operations. Neither can be fairly viewed as subordinate to the other and each, in such circumstances, has been considered a distinct and different enterprise of the common owner. [35 Wage Hour Manual at 375.]

2. That the Waialua Company was under no misapprehension regarding the position of the Department of Labor is evident from the testimony in the record in this case of the Company's own witness Mr. Raymond John O'Donnell, who testified that the company recognized that the Fair Labor Standards Act was applicable to employees in the factory and allied shops during the off season, to some of the employees in the railroad department and to its office staff, and that it paid them for overtime pursuant to the requirements of the Act during the off season when no processing was going on (R. 336-367, 391-392).[3] The plain import of this evidence is that the Company regarded these employees as outside the scope of the agriculture exemption of 13(a)(6), and within the scope only of Section 7(c) (the overtime exemption for processing). In addition, prior to the institution of this litigation, the Company admittedly

[3] See also findings of District Court, R. 793, 797, 802.

paid social security taxes on the mill, repair shop and railroad employees on the assumption that they were "industrial", not "agricultural", workers under the Social Security Act (R. 623, 628).

3. And there can be no question, of course, that since the date the Department of Labor filed its brief *amicus curiae* in the first appeal of the instant cases, i.e. November 1948, there has been no doubt of the Department's interpretation of the agriculture exemption. And it is noteworthy that the views stated by the Department of Labor in this brief were specifically called to the attention of the legislative committee which held hearings on the 1949 amendments to the Act. (See Hearings before Committee on Education and Labor, House of Representatives, on H.R. 2033, 81st Cong., 1st Sess., Volume 2, pp. 1165-1166, 1168). Ernest Green, Vice President of the Hawaiian Sugar Planters Association testified about the pendency of this litigation in the Ninth Circuit, and stated:

> The Administrator of the Wage and Hour Division has filed an amicus brief with the Court opposing the application of the agricultural exemption to [the processing of sugar cane, even when done by the growers upon only the cane which he grows himself [p. 1166] * * *. He has taken the position, sir, that it [processing of sugar cane] is not exempt by the terms of the agricultural exemption. He does not contend that it is not exempt by 7(c). Section 7(c) is the section as you know, sir,

> which exempts certain agricultural processing operations, among them the processing of sugar cane * * * [p. 1168].[4]

Since the agricultural exemption in Section 13 (a)(6) was not amended except in one limited respect not here pertinent, it would appear that Section 16(c) of the 1949 amendments, which explicitly kept "in effect" "an order, regulation, or *interpretation* of the *Administrator* of the Wage and Hour Division or of the Secretary of Labor" not inconsistent with those amendments, would apply to the interpretation as stated in the brief to which the committee's attention was directed. The fact that this interpretation was specifically called to the attention of the legislative committee, and that the statutory language thus interpreted was not amended would seem persuasive evidence of con-

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[4] It may be noted that Mr. Green's testimony also shows that there are a number of sugar cane producers in Hawaii who do not perform their own processing. While, according to his testimony, most of the large scale growers in Hawaii do process their own sugar cane, he testified that three large scale growers do not process their own cane but have it milled by an adjacent place, and that some 1,500 or 1,800 small "adherent planters" also do not process their own cane. Hearings, *supra*, p. 1173. From information furnished by the Sugar Division of the United States Department of Agriculture, we are advised that there are about 26 sugar processing plants in Hawaii, only 7 of which process solely cane grown by themselves, and 19 of which process cane grown by others as well, 9 of them processing substantial amounts for other growers. It is thus apparent that it is by no means a universal practice among sugar cane growers in Hawaii to process their own cane.

gressional purpose to leave that interpretation unchanged.

Thus, this seems clearly an appropriate case for the application of the principle repeatedly applied by this Court that " * * * the substantial reenactment in later acts of the provision theretofore construed by the Department is persuasive evidence of legislative approval of the regulation" (*Brewster* v. *Gage*, 280 U.S. 327, 337). This Court's restatement of the principle in *National Labor Relations Board* v. *Gullett Gin Co.*, 340 U.S. 361, 366, is equally pertinent here:

> * * * In the course of adopting the 1947 amendments Congress considered in great detail the provisions of the earlier legislation as they had been applied by the Board. Under these circumstances it is a fair assumption that by reenacting without pertinent modification the provisions with which we here deal, Congress accepted the construction placed thereon by the Board and approved by the courts.

The application of this principle would seem particularly appropriate here in view of the specific provision of Section 16(c) of the 1949 amendments. See *Alstate Construction Co.*, v. *Durkin*, 345 U.S. 13, 17, where this Court upheld a changed interpretation of the Department of Labor under this very Act, noting that "The new interpretation was reported to Congressional committees on a number of occasions" and "Interested employers severely criticized the Administrator's changes", but "In-

stead of adopting any of the suggestions to undermine the Administrator's interpretation, Congress in a 1949 amendment to the Fair Labor Standards Act provided that all past orders, regulations and interpretations of the Administrator should remain in effect", except to the extent that they might be inconsistent with the Amendments (referring specifically to Section 16(c)). (335 U.S. at 16-17).[5]

II.

The American Farm Bureau Federation, like the Waialua Company, also relies heavily on excerpts from the legislative history. The legislative debates on the agricultural exemption are extremely voluminous and no sound conclusions can be reached from consideration of isolated colloquies. The entire debates on this exemption unquestionably show an intent to exempt work which is truly

[5] The Farm Bureau Federation's brief (pp. 15-18), like that of *Waialua*, places considerable emphasis on various administrative interpretations that truck drivers working for a farmer and hauling his crops and equipment are exempt. But Waialua's extensive transportation and repair operations are hardly comparable to the incidental truck drivers in the examples given in these administrative interpretations. For the same reason, the relevance of counsel's statement, in oral argument, that the company has abandoned its railroad transportation system and is now using trucks is not apparent. Since the facts of the change-over to trucks are not in the record, we cannot, of course, know the precise nature of the present system. But in all likelihood the trucking system is of the same size and proportions as the railroad transportation system, so that the examples in the administrative interpretations would be no more applicable to the trucking system than to the railroad.

of an agricultural nature. But the legislative history also shows the Congressional concern that the exemption should not make sweeping inroads into the coverage of employees engaged in industry, including manufacturing and processing. This is evident from the care with which the exemptions for processing and manufacturing were phrased. For example, see the colloquy between Senators Barkley and Schwellenbach quoted in the First Circuit's *Bowie* opinion.

As the First Circuit pointed out in the *Bowie* case, Sections 13(a)(10) and 7(c) which relate specifically to particular kinds of "processing" of agricultural commodities, were very carefully limited. Section 13(a)(10), for example, is not only limited to certain specifically enumerated processes, (among which processing of sugar cane is *not* found), but is further limited to preparation of the commodities in their "raw or natural state" and only to processing "within the area of production". Similarly, the overtime exemption in sec. 7(c) is specifically limited to enumerated processes and further limited to the "place of employment". The fact that this exemption, which is from the overtime provisions of the Act only, specifically exempts "the processing of * * * sugar cane" into raw sugar, as the First Circuit points out, is most convincing evidence that Congress intended to deal with that processing specifically and separately and not in any general exemption. It is noteworthy that, with all the terminology included in the agriculture exemption, the word "processing" is no-

where used, and indeed appears to have been scrupulously avoided. There is plainly no rational basis why Congress should have provided a full exemption (from minimum wage, child labor, as well as overtime requirements) for processing sugar cane by large producers while providing only a partial and much more limited exemption for the processing of cane grown by small producers. Yet this is the effect of Waialua's and the American Farm Bureau Federation's contention.

Respectfully submitted,

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APRIL 1, 1955.

APPENDIX

For Release Monday,
September 15, 1941

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

APPELLATE COURT OPINION RULES IN EXEMPTION OF SUGAR MILL EMPLOYEES

Exemption of workers in sugar mills as agricultural employees from the wage and hour provisions of the Fair Labor Standards Act seems to be contrary to a prevailing appellate court decision, General Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, warned today.

He referred to the decision of United States Circuit Court of Appeals for the First Circuit in the case of Bowie v. Gonzalez 117 Fed. (2d) 11. General Fleming pointed out that in its decision the court referred to employees working in sugar mills as typical factory workers who are not exempt from the wage and hour law as agricultural employees.

"It would seem from the court's decision," General Fleming said, "that the exemption for agricultural employees provided by the wage and hour law does not apply to sugar mill employees, even if only the cane ground in such a mill is cane grown by the sugar mill operator on his own fields.

"Therefore it appears that the Wage and Hour Division went too far in expressing the view in Interpretative Bulletin No. 14, relating to exemptions granted to agriculture and the processing of agricultural commodities, that if a sugar mill operator grinds only the cane which he grows himself the exemption for agricultural employees may possibly apply under some circumstances to his mill employees. As stated in all the Division's interpretative bulletins, the opinions expressed 'indicate merely the construction of the law which will guide the Administrator in the performance of his administrative duties, unless and until he is directed otherwise by authoritative ruling of the courts.' "

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IN THE

Supreme Court of the United States

October Term, 1954

No. 357

CIRACO MANEJA, ET AL., *Petitioners*

v.

WAIALUA AGRICULTURAL COMPANY, LIMITED, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE

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CIRACO MANEJA, ET AL., *Petitioners*

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (Pet. App., pp. 1-81) is reported in 97 F. Supp. 198, and also in 10 WH Cases 287 and 20 Labor Cases ¶66,531.[1] The opinion of the Court of Appeals (Pet. App., pp. 83-105) is reported in

[1] The findings of fact and conclusions of law of the District Court, which are not reported, appear at R. 190-307 and 308-320. "R." as used herein refers to pages in the record printed in the Court of Appeals, nine copies of which have been filed with the Clerk of this Court by Petitioner pursuant to Rule 21(4).

12 WH Cases 172 and 25 Labor Cases ¶68,404. The opinion of the Court of Appeals on Respondent's petition for rehearing (Pet. App., pp. 107-108) is reported in 12 WH Cases 254 and 26 Labor Cases ¶68,645. The opinion of the Court of Appeals in a prior proceeding is reported in 178 F. (2d) 603.

JURISDICTION

The judgment of the Court of Appeals herein was dated and entered on May 5, 1954 (Pet. App., p. 106). Respondent filed a timely petition for rehearing on June 2, 1954, which was denied by order dated and entered on June 24, 1954.[2] An order extending until September 22, 1954, the time within which Petitioners might file a petition for certiorari was entered by Mr. Justice Black on July 13, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The case arises under the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. §201 *et seq.*), hereinafter called 'the Act'.[3] Pertinent provisions of the Act which are involved are set forth in the Appendix to the Petition, pp. 109-111. In addition, Sec. 3(c) defines "State" to mean—

> ". . . any State of the United States or the District of Columbia or any Territory or possession of the United States."

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[2] See Appendix to Petition for Certiorari filed by the Respondent herein in No. 358, present Term, p. 23.

[3] The Fair Labor Standards Amendments of 1949 (63 Stat. 910, effective January 25, 1950) made certain changes in Sections 3(b) and 3(j). No issue is presented herein under the 1949 Amendments, however, since this proceeding is solely concerned with application of the Act to employees in specified workweeks in 1946-1947 (Petition, p. 6; Pet. App., p. 5).

QUESTIONS PRESENTED

For reasons stated *infra* pp. 8-10, Respondent believes that the Petitioners have erroneously presented questions on the merits which are not appropriate for review, and have failed to present appropriately the fundamental jurisdictional basis of the judgment below in regard to their counterclaim; namely:

Where the District Court entertained Respondent's declaratory judgment suit as to the application of the Fair Labor Standards Act to Petitioners, and awarded damages to Petitioners on their counterclaim under Section 16(b) of the Act, whether the Court of Appeals, after reversing the District Court and directing dismissal of Respondent's suit because of alleged absence of a "case or controversy", erred in refusing on the same fundamental ground to review the merits of the judgment on the counterclaim.

STATEMENT OF THE CASE

Petitioners' statement of the case (Petition, pp. 4-13) is incomplete or inaccurate in many respects. The relevant background of this litigation is set forth in the Petition for Certiorari filed by Respondent herein in No. 358, present Term, pp. 5-11, to which the Court is respectfully referred. In view of Petitioners' extended references to the facts and the merits, Respondent submits the following additional statement:

All material facts are set forth in a lengthy Stipulation of the parties.[1] Respondent operates a sugar plantation

[1] The portion of the Stipulation containing an overall description of Respondent's plantation and its operations is set forth in the record printed in the court below (R. 27-123, 129-178, 721-724). The entire Stipulation is set forth in the original transcript of record herein (pp. 32-864), which has been certified by the Court of Appeals under Rule 21(1).

on the island of Oahu. Since 1898 Respondent has been engaged almost exclusively in the growing, cultivating, and harvesting of sugar cane on land owned or leased by it (R. 31), and in the processing of such sugar cane into raw sugar and molasses on the plantation where grown (R. 30, 31, 32, 721). *Respondent processes no cane except that grown by itself on its plantation* (R. 84). Neither Respondent nor any of its employees, including the Petitioners, engages in any sugar refining operations (R. 32). Substantially all the land (9,663 acres) now devoted to sugar cane production has been owned or leased and used by Respondent for this purpose since 1910 (R. 33).

On its plantation Respondent prepares and plows the fields for the planting of sugar cane; plants sugar cane; ratoons the fields;[5] cultivates sugar cane; applies fertilizer to the cane fields; irrigates cane fields by a network of irrigation ditches and water storage reservoirs; harvests sugar cane; maintains a network of field roads (which criss-cross the cane-growing land (R. 35)) for the transportation by truck of labor, field supplies and equipment throughout the plantation; and transports sugar cane by a narrow-gauge railroad (which also criss-crosses the cane-growing land (R. 35)) from the fields where grown to Respondent's mill.[6] These integrated operations are more fully described in the Stipulation (R. 39-66).

Respondent's mill, located on its plantation (R. 38), grinds the sugar cane grown on its plantation into raw sugar and molasses. Respondent then loads the bagged

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[5] "Ratooning" refers to operations performed after a field is harvested to prepare it for the growing of another crop (R. 42).

[6] The parties have stipulated that the term "mill" means the building and equipment of the Respondent used in the actual processing of sugar cane into raw sugar, including cane carrier, cane cleaning plant and scales, crushing plant, boiling house, fireroom, power plant, sugar warehouse and molasses tanks, and all equipment therein (R. 31).

raw sugar and molasses for shipment to the continental United States or stores such products temporarily in the sugar warehouse or molasses tanks (R. 66-82, 84-85). Respondent's operations and the work of its employees are completed by loading the bagged raw sugar and the molasses into railroad cars owned and operated by an independent carrier at the site of the mill, and by pushing such cars from such site onto a nearby spur of the carrier (R. 31-32, 59).

Respondent has equipped and maintains complete service shops for prompt minor repairs and emergency work and major overhaul of field and processing machinery, equipment and facilities indispensable to its growing, harvesting and processing operations. These service repair shops are located on the plantation, in an area extending not more than 300 feet from the mill building proper (R. 94, 723).

The foregoing operations, and Petitioners' work therein, were highly integrated and interdependent. Sugar cane is very perishable and starts to deteriorate immediately after being cut. Consequently, it must move "continuously from field to crushing mill", there to be processed into raw sugar within a few hours after it is cut, so that it will not spoil (Pet. App., p. 90; R. 33). All of Respondent's cane-growing lands were operated as an integrated farming unit and single enterprise. Employees working in the fields moved from one area to another, depending upon the program of plowing, planting, irrigating, fertilizing, harvesting, etc. Respondent's growing, harvesting and processing of cane and the marketing of the raw sugar constitute one continuous and year-round operation (R. 35-36). Machinery breakdowns in the mill may result in a shutdown of the entire mill, which would necessitate a discontinuance of harvesting and transportation operations until mill repairs are complete. Breakdowns of harvesting machinery or of cane transportation

facilities in turn may result in a shutdown of the entire mill (R. 94).

Respondent owns and maintains 820 dwelling houses, all of which are located on the plantation (R. 120); and various facilities and services, including firewood, water, electricity, sewage disposal, street maintenance and cleaning, and recreational facilities, are provided the occupants of such dwelling houses (R. 118, 119). These dwelling houses are occupied by 3,373 persons, of whom 2,952 are employees and pensioners of Respondent and their families. The remaining 421 persons living in such houses are lessees and their families who are not employed by the Respondent and who either work off the plantation or who own, operate or are employed by independently controlled businesses within it (R. 120-121). No employee, including any of the Petitioners herein, is required as a condition of employment to live on the plantation or in plantation dwelling houses or to use any service or facility which Respondent furnishes or renders its employees (R. 120). The relationship between the Respondent and its employees by virtue of the occupancy of such houses, including each Petitioner herein, is that of landlord and tenant (R. 120).[7]

The District Court wrote a lengthy opinion (Pet. App., pp. 1-81), made findings as to each Petitioner (R. 190 *et seq.*, 308 *et seq.*), and entered a judgment (R. 321 *et seq.*). In substance the District Court held:

1. Each Petitioner was engaged in commerce or in the production of goods for commerce, within the meaning of Section 7(a) of the Act, during each workweek of the period in question (R. 322).

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[7] For the convenience of the Court, we have set forth in the Appendix, *infra*, pp. 24-26, a detailed summary of the various activities engaged in by each Petitioner.

2. Of all the activities in litigation (described *supra*, pp. 3-6), the agriculture exemption in Sec. 13(a)(6) exempted Petitioners only while engaged in preparation of land for planting, planting, ratooning, cultivating, fertilizing, irrigating, and the harvesting operation only up to the point where cars loaded with cut cane were moved from the fields on portable track to the fixed line of Respondent's narrow gauge railroad (Pet. App., pp. 46-48; R. 191-192, 194, 196, 198, 201, 308-310).

3. The Section 7(c) processing exemption exempted only Petitioners working in the mill building while operating processing machinery, repairing such machinery either during the time the mill was operating or during the weekend shut-down, or bagging, loading and shipping raw sugar (Pet. App., pp. 53-58; R. 213, 310-318).

4. If in any workweek a Petitioner performed work which was exempt from the overtime provisions of the Act by virtue of Section 13(a)(6) or Section 7(c), the exemptions would be lost in that workweek if the Petitioner also did any other work not so exempt, regardless of how insubstantial such other work was (R. 336).

The District Court awarded Petitioners judgment under the counterclaim for unpaid overtime compensation, liquidated damages, costs and attorney's fees (R. 336-338).

The Court of Appeals disapproved many of the essential findings by the District Court (e.g. Pet. App., pp. 84-85, 89-95, 101-102), and concluded that each Petitioner was totally exempt from the Act under the agriculture exemption in Section 13(a)(6) in each workweek covered by the litigation (Pet. App., pp. 84-85, 88-89, 90-93, 95, 98, 100 *et seq.*). The court accordingly did not deem it necessary to consider the processing exemption under Section 7(c) (Pet. App., p. 105 note 45). However, the court's opinion and judgment went off on the ground that the parties were in apparent collusion because they had stip-

ulated all material facts and because neither had contested the constitutional validity of the Act under the commerce clause as applied to the agricultural employment of Petitioners here involved (Pet. App., pp. 86, 99-100, 101-102, 107-108). The court thereupon ordered the judgment reversed with direction to dismiss the Respondent's declaratory judgment suit for alleged absence of a case or controversy (Pet. App., p. 106), but declined upon petition for rehearing to direct dismissal of the counterclaim (Pet. App., pp. 107-108).

ARGUMENT

I.

The Petition Improperly Presents Questions on the Merits Which Were Not Passed Upon by the Court of Appeals

1. Since the Court of Appeals did not pass upon the merits of the controversy between the parties, Petitioners' questions presenting issues on the merits are not appropriate for review. See *United States* v. *Ballard*, 322 U.S. 78, 88; *Aetna Casualty & Surety Co.* v. *Flowers*, 330 U.S. 464, 468; *Labor Board* v. *Pittsburgh S.S. Co.*, 337 U.S. 656, 661-662; *Polizzi* v. *Cowles Magazine Co.*, 345 U.S. 663, 666.

The District Court's judgment resolved the issues on the merits of both Respondent's declaratory judgment suit and Petitioners' counterclaim (R. 321-336, 336-338). The Court of Appeals, however, manifestly refused to rule directly on the merits of either suit or counterclaim. It remanded the declaratory judgment suit with direction to dismiss, on the fundamental ground that no case or controversy was presented because the parties were in "apparent collusion . . . in the attempt to obtain an advisory opinion upon constitutional questions" (Pet. App., pp. 86, 99-100, 107-108). As for the counterclaim, the Court of

Appeals reversed the money judgment entered thereon by the District Court; construed the counterclaim "as a petition also for declaratory relief"; and stated that the "entire cause", including the counterclaim, was "tainted by apparent collusion" (Pet. App., pp. 107-108). If the court's *dicta* referred to in the Petition (pp. 14-19) had truly reflected the court's "holding", the judgment actually entered should have reversed the District Court with direction to enter judgment *for* Respondent and *against* Petitioners.

2. The instant Petition does not present for review the fundamental ground upon which the Court of Appeals based its reversal of the District Court, as to the counterclaim as well as the declaratory judgment suit. Accordingly that fundamental ground is not before the Court under the Petition herein. See Rule 23(c); *Irvine v. California,* 347 U.S. 128, 129-130; *Mazer v. Stein,* 347 U.S. 201, 206 note 5, 208 note 6; *Radio Officers v. Labor Board,* 347 U.S. 17, 37 note 35; *United States v. Penn Foundry Co.,* 337 U.S. 198, 205 note 1; *Connecticut Light & Power Co. v. Palmer,* 305 U.S. 493, 496-497; *General Talking Pictures v. Western Electric Co.,* 304 U.S. 175, 177-178.

Review of the fundamental basis of the judgment below is presented in its full and appropriate context only in the Petition for Certiorari which the Respondent herein has filed in No. 358, present Term, praying that the judgment below be reversed with direction to review the merits of the long-standing controversy between the parties as presented by the record and determined by the judgment of the District Court adjudicating both suit and counterclaim.

In all the circumstances, if a writ of certiorari be deemed appropriate on the instant petition, the writ should be limited to the issue of "case or controversy" underlying the judgment below, so that review by this Court on the

respective petitions of the parties (in Nos. 357 and 358) may eventuate in a directive to the Court of Appeals to resolve the controversy between the parties on the merits. See *Land v. Dollar*, 330 U.S. 731, 739; *Protective Committee* v. *Securities Exchange Commission*, 346 U.S. 810, 346 U.S. 521; *Partmar v. Paramount Pictures Corp.*, 345 U.S. 963, 347 U.S. 89; *cf. Altvater v. Freeman*, 319 U.S. 359, 363-366.

II.

ASSUMING THAT THE COURT OF APPEALS IS DEEMED TO HAVE PASSED UPON THE MERITS, THE JUDGMENT BELOW, INSOFAR AS IT SET ASIDE THE MONEY JUDGMENT AWARDED PETITIONERS BY THE DISTRICT COURT UNDER THE COUNTERCLAIM, IS SUSTAINED BY THE CORRECT CONSTRUCTION OF THE STATUTORY EXEMPTIONS UNDER APPLICABLE DECISIONS OF THIS AND OTHER COURTS; AND THERE IS NO EXISTING CONFLICT OR UNCERTAINTY AMONG THE CIRCUITS ON THESE ISSUES.

Respondent vigorously disagrees with the *dicta* of the Court of Appeals that employment relations in agriculture are beyond the constitutional power of Congress (Pet. App., pp. 99, 102-103). In the proceedings below, counsel for both parties, as well as counsel for the Department of Labor (which appeared *amicus curiae*), separately and independently assumed in trial and argument that all the employees involved (other than those engaged in making dwelling repairs and maintaining related domestic facilities) were engaged in the production of goods for commerce.[8] That assumption was made in good

[8] Respondent contended that the Petitioners engaged in making dwelling repairs and maintaining related domestic facilities were not engaged in commerce or in the production of goods for commerce, within the meaning of the Act (R. 11-12). The District Court's conclusion to the contrary (Pet. App., pp. 63-77) is op-

faith by the respective parties and was consistent with the applicable decisions of this Court. See *Farmers Irrigation Co. v. McComb*, 337 U.S. 755, 759. All parties rightly recognized that the constitutional power of Congress under the commerce clause reached the production of agricultural commodities destined for interstate movement. See *Wickard v. Filburn*, 317 U.S. 111, 118; *Santa Cruz Fruit Packing Co. v. Labor Board*, 303 U.S. 453; *Mandeville Farms v. Sugar Co.*, 334 U.S. 219, 236-237.

The actual controversy between the parties, as presented by the record, briefs, and oral argument, revolved

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posed by all the precedents involving employees in comparable work (*Wilson v. R.F.C.*, 158 F. (2d) 564 (C.C.A. 5), *cert. den.* 331 U.S. 810; *Morris v. Beaumont Mfg. Co.*, 84 F. Supp. 909 (W.D. S.C.); *Coomer v. Durham*, 93 F. Supp. 526 (W.D.Va.)), and also by the view of the court below (Pet. App., pp. 93-95). In this statute Congress "plainly indicated its purpose to leave local business to the protection of the States" (*Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 570; *Higgins v. Carr Bros. Co.*, 317 U.S. 572, 574; *S. Rep. 884*, Committee on Education and Labor, 75th Cong. 1st Sess., p. 5); and did not exhaust its constitutional power over commerce. *10 East 40th Street Bldg., Inc. v. Callus*, 325 U.S. 578, 579; *McLeod v. Threlkeld*, 319 U.S. 491, 493. The Hawaiian legislature has imposed its own wage and hour requirements with respect to these services. *Revised Laws of Hawaii*, 1945, Title 9, Chapter 75, Secs. 4351-4366.

Contrary to the findings or suggestions of the District Court (Pet. App., pp. 73-74), occupancy of the houses involved was optional with the Petitioners and all other employees (R. 120, 121, 428-429, 430, 433; See also R. 601); and there is no evidence to show that the making of dwelling repairs and the maintenance of related domestic facilities were necessary to Respondent's production operations, or that such operations were any more efficient because the employees did live on the plantation, or that those employees living off the plantation were any less efficient than those living on the plantation. Petitioners were employed on houses and facilities which were not themselves produced for or shipped in interstate commerce, nor were they used in or devoted to the production of goods for interstate commerce. They merely "serve[d] the needs" of the employees, as the parties stipulated (R. 118), when their occupants were not engaged in such production at all.

around the construction of the Act rather than the constitutional power of Congress over agricultural employment.

Respondent had contended below, and the Court of Appeals' *dicta* specifically agreed, that all the employment here involved was exempt from the Act in view of Sections 3(f) and 13(a)(6). *Supra*, p. 7. Respondent respectfully submits that the judgment below, insofar as it set aside the money judgment awarded Petitioners by the District Court under the counterclaim, is sustained by the correct construction of this broad agricultural exemption, and by the year-round exemption of sugarcane processing in Section 7(c). "In the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason". See *Brown v. Allen*, 344 U.S. 443, 459; *Walling v. General Industries*, 330 U.S. 545, 547 and cases cited; *Stern and Gressman, Supreme Court Practice* (2d ed.) p. 220.

1. *Agricultural Exemption*

"Employment in agriculture is probably the most far reaching" of the exemptions in the Act. *Addison v. Holly Hill Fruit Products*, 322 U.S. 607, 612.

The statutory definition of "agriculture" (Section 3(f)) is divided into two distinct parts. The first part is "farming in all its branches and among other things includes the cultivation and tillage of the soil, . . . the production, cultivation, growing, and harvesting of any agricultural . . . commodities . . .". See *Farmers Irrigation Co. v. McComb*, 337 U.S. 755 at 762. The second distinct part of the statutory definition of "agriculture" includes "practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming oper-

ations, including preparation for market, delivery to storage or to market or to carriers for transportation to market". This part of the definition embraces "practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm". *Id.*, 337 U.S. at 763.

The court below correctly concluded that Respondent was a "farmer" conducting the farming operations enumerated in the statutory definition; and that Petitioners all worked on Respondent's own plantation, i.e., its farm[9] (Pet. App., pp. 91-93) during the work-weeks in question.

The Court of Appeals rightly disagreed (Pet. App., p. 91, note 16) with the District Court's assertion that Respondent was engaged in a number of separate and distinct "enterprises" in which Respondent had assumed different functions of "farmer", "carrier", "manufacturer", "shipper" and "operator of village communities" (Pet. App., p. 44). Functionally, all such tasks were similar to the activities conducted by vast numbers of wheat farmers, cotton farmers, fruit and vegetable farmers, among many others, in the continental United States. Every "farmer" is a "carrier" or "shipper" in the sense that

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[9] "Farm" is defined in Webster's New International Dictionary, Unabridged Edition (2d. ed.) 1951, p. 919 as: ". . . a piece of land held under lease for cultivation; hence, any tract of land (whether consisting of one or more parcels) devoted to agricultural purposes, generally under the management of a tenant or the owner; any parcel or group of parcels of land cultivated as a unit". Moreover the Secretary of Agriculture has determined that "In the case of the Territory of Hawaii, a farm means all land which is farmed by a producer, or group of producers, as a single farming unit, with cropping practices, work stock, equipment, labor, and management substantially separate from that of any other such unit". *Determination of a Farm, etc., for the Territory of Hawaii*, made by the Secretary of Agriculture under the Sugar Act of 1937 (Code of Federal Regulations, Title 7, Ch. VIII, Pt. 802, §802.30 (2 F.R. 2108)). Respondent's plantation meets these definitions (R. 35-36).

(i) he transports his products from the fields to storage, to market, to a processor, or to a carrier for transportation to market, (ii) he transports from one part of the farm to another agricultural supplies and agricultural equipment, and (iii) he sends his trucks to a nearby town and hauls back necessary farm supplies and equipment. Moreover, every farmer is a "manufacturer" to the extent to which he transforms the product he grows into marketable condition. Many fruit and vegetable farmers can or pack their own fruits or vegetables; many cotton farmers gin their own cotton; and many dairy farmers process their own milk into butter and cheese. All of this is done preparatory to marketing. Also practically every farmer maintains and repairs his farm implements, machinery, equipment, farm buildings and grounds, trucks, and other hauling facilities (including the field roads on the farm), and all other tools used in the farm operation.

This all-embracing scope of the "agriculture" exemption is fully borne out by its legislative history. Senator Black, Chairman of the Senate Committee on Education and Labor and in charge of the bill that became the Fair Labor Standards Act, stated that bottling milk, packing apples, ginning cotton, slaughtering and preparing hogs for market, and *processing sugar cane into raw sugar or syrup*—all highly industrialized operations—were intended to be exempt if such operations were performed by a farmer upon his own produce. 81 Cong. Rec. 7656, 7657, 7658, 7659. Congress made this doubly clear by adopting Senator McGill's amendment providing that the agricultural exemption should apply not only to practices ordinarily performed by a *farmer* as an incident to his farming operations, but also to practices performed *on a farm* as an incident to such farming operations. 81 Cong. Rec. 7888. His amendment further added to the exemption the words "delivery to market". The stated purpose of the McGill amendment was to exempt all

kinds of work done on a farm so long as it was incidental to agricultural purposes and was preparatory to marketing the field crop, and all kinds of labor performed in connection with delivery to market of agricultural products. 81 Cong. Rec., pp. 7888, 7927, 7928.[10]

No distinction was drawn by Congress between "large" or "small" farms or between "hand labor" or "mechanized" farms. *Cf. Labor Board v. Campbell*, 159 F.(2d) 184, 187 (C.C.A. 5). Respondent's field operations are no less mechanized than its processing or hauling operations (R. 57, 115); and throughout American agriculture, growing operations are commonly integrated with processing operations. Congress legislated with full knowledge of the technological advances in American agriculture in the generation preceding enactment of the Act.[11]

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[10] The legislative history shows that Congress started with a very broad, comprehensive definition of agriculture, and that such definition at every stage of its consideration by one or the other of the houses of Congress, as the bill worked its way through to passage, was made more and more all-inclusive. S. Rep. 884, 75th Cong., 1st Sess., p. 6; 81 Cong. Rec. 7648; H. Rep. 1452, 75th Cong., 1st Sess., pp. 4-5, 11; H. Rep. 2182, 75th Cong., 3d Sess., p. 2; 83 Cong. Rec. 9162-9163, 9253-9254. Without the broad definition of "agriculture" which was written into the bill, it is a reasonable conclusion from the legislative history that the bill would not have been enacted into law (83 Cong. Rec. 7393, 9257).

[11] "Much of the trend toward larger farms, as shown by the distribution of farms by size for the various censuses, has been due to the consolidation of farms into larger operating units made possible by increased mechanization." 2 *U.S. Census of Agriculture* (1950) c. 10, p. 772; see also c. 3, pp. 198, 200. Farms or plantations the size of Respondent's are not rare in the United States and its territories and possessions; the last available census disclosed more than 7,100 farms with 10,000 acres or more. 2 *U.S. Census of Agriculture* (1950) c. 10, p. 774, Table 4. Moreover, Congress has repeatedly declined to deny exemption to so-called "mechanized" or "industrialized" agriculture, notwithstanding arguments presented on behalf of Hawaiian plantation employees by the union representing Petitioners (R. 119, 120).

The foregoing demonstrates that the "agriculture" exemption embraces *all* the tasks performed by Petitioners in any given workweek in question. The statutory language clearly establishes that the agriculture exemption includes all operations performed by the farmer or on the farm, as an indispensable incident to or in conjunction with the farming operations, up to and including the farmer's disposal of his product. The exemption thus embraces all of Petitioners' activities in issue, such as (i) transporting cane to the mill (R. 205-206), (ii) hauling supplies and laborers to and from the fields (R. 235-239, 248-256, 279-283), (iii) repairing and maintaining field implements (R. 191-204) and hauling equipment (R. 198-201, 206-212) necessary to the continued functioning of the field operations and of the operations involved in delivering the cane to the mill, (iv) processing the cane at the mill into raw sugar and molasses (R. 310-317, 216-220), (v) keeping the mill equipment in good repair (e.g. R. 310-317, 212-220, 223-226; see also R. 94), and (vi) delivering raw sugar to the sugar warehouse for temporary storage and shipping same (R. 317-318)[12].

Hearings on Fair Labor Standards Act Amendments of 1949, Senate Committee on Labor and Public Welfare, 81st Cong., 1st Sess., pp. 972-977, 979-981; *Hearings on S. 2386* (among other bills), Committee on Labor and Public Welfare, 80th Cong., 2d Sess., pp. 317-334; *Hearings on S. 1349*, Committee on Education and Labor, 79th Cong., 1st Sess., pp. 1048-1070.

[12] The Court of Appeals rightly concluded that the agriculture exemption also embraced the Petitioners engaged in making dwelling repairs and maintaining related domestic facilities, assuming that such activities constituted the production of goods for commerce. (Pet. App., p. 95). Coverage under Section 3(j) required that the activities be "necessary" to the production and processing of Respondent's sugarcane. Exemption under Section 3(f) required only that the activities be carried on by Respondent as "an incident to or in conjunction with" its farming operations. If, contrary to Respondent's contention, such activities were covered by Section 3 (j), they were necessarily exempt under Section 3(f) when carried out on "a farm" by a farmer's own employees.

Specifically, the activities of Petitioners in hauling perishable sugar cane from the field to the mill on Respondent's narrow gauge railroad—all on Respondent's plantation—were merely part of the "gathering in" of the sugar crops embraced in the term "harvesting"[13] (Pet. App., p. 90). It is irrelevant that such hauling took place by narrow gauge railroad rather than by truck or some other medium. See opinion of court below on prior appeal; Appendix to Petition in No. 358, present Term, p. 110.

Again, in view of the necessity of processing the cane into raw sugar within a few hours after it is cut (*supra*, p. 5), Petitioners' employment in connection with Respondent's mill was likewise embraced in "harvesting" (Pet. App., p. 90), or in "practices . . . incident to or in conjunction with" farming. Such "processing" on the plantation is obviously distinguishable from the refining operations referred to in the Petition (pp. 3, 9), which are conducted on the mainland on a non-perishable product by a cooperative none of whose employees is here involved (Pet. App., pp. 86-87).

It is immaterial that Respondent's processing, hauling and repair shop activities did not take place on areas allotted to the growing of sugar cane. Field roads, barns, silos, wells and many other improvements, commonly found on farms, are also located on areas separate from the fields where the crops are grown, but the term "farm" has never been deemed to exclude the locations of such improvements.

The foregoing analysis is in full harmony with this Court's decision in *Farmers Irrigation Co. v. McComb*, 337 U.S. 755. After referring to the two distinct parts

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[13] *Webster's New International Dictionary*, Unabridged Edition (1951 ed.) p. 1142; *College Standard Dictionary*, Funk & Wagnalls (1943) p. 526.

of the definition of "agriculture", the Court there said with respect to the work of the cooperative irrigation company involved (337 U.S. at 766):

> ". . . coming to the second branch of the definition of agriculture . . . it does constitute a practice performed as an incident to or in conjunction with farming. If the Act exempted all such practices, the company would be exempt. But the exemption is limited. Such practices are exempt only if they are performed by a farmer or on a farm.[15]
>
> "[15] Although not relevant here, there is the additional requirement that the practices be incidental to 'such' farming. *Thus, processing on a farm of commodities produced by other farmers is incidental to or in conjunction with the farming operation of the other farmers* and not incidental to or in conjunction with the farming operation of the farmer on whose premises the processing is done. Such processing is, therefore, not within the definition of agriculture. Bowie v. Gonzalez, 1 Cir., 1941, 117 F.(2d) 11". [Emphasis supplied]

The Court thus emphasized that processing on a farm of farm commodities is incidental to or in conjunction with the farming operation by which the commodities are produced. And where, as here, such processing is performed on a farm by that same farmer's employees on commodities produced by that farmer on that farm, such processing is clearly incidental to or in conjunction with the farming operation of that farmer, and therefore comes within the second branch of the definition of "agriculture". Furthermore, the rule applicable to processing applies equally to all other activities of Respondent here involved.

Respondent's operations are thus wholly distinguishable from those of the Farmers Irrigation Company, which was not a farmer, performed no operations on a farm, and was "a separate and self-contained activity" in which workers "are employed by the company, not by the farmers who own the company". 337 U.S. at 768, 760-762. See also

Bowie v. Gonzalez, 117 F.(2d) 11 (C.C.A. 1) (employees of a cooperative sugar "centrale" in Puerto Rico engaged in transporting and processing sugar cane grown by various plantations).

Any conflict between the First and Ninth Circuits, as suggested in the Petition (pp. 21-27), has been resolved in the *Farmers Irrigation* case, *supra*. There was and is no actual conflict, however, since the First Circuit decisions themselves recognize that the hauling, handling and processing by a farmer exclusively of his own produce on his own farm by his own employees are exempt under Section 3(f),—unlike the activities of a separately organized cooperative. See *Puerto Rico Tobacco Marketing Coop. Ass'n. v. McComb*, 181 F.(2d) 697, 701; *Vives v. Serralles*, 145 F.(2d) 552, 553 (exemption held applicable to a group of a farmer's employees working on the farm, transporting to the mill thereon cane grown thereon).[14]

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[14] The views of the Department of Labor, upon which Petitioners rely (Pet., pp. 27-28), represent a sharp departure from principles long followed by the Department. See *Interpretative Bulletin No. 14*, U.S. Department of Labor, issued August, 1939, (3 C.C.H. Labor Law Reporter, ¶24,488), ¶¶10(b), (c), (d), (e), and (f) and ¶12; *Hearings on S. 1349*, Comm. on Education & Labor, 79th Cong., 1st Sess., p. 236; *Hearings on H.R. 2033*, Comm. on Education & Labor, 81st Cong., 1st Sess., pp. 79, 97. In these circumstances the Department's altered views are entitled to no weight (*Walling v. Halliburton*, 331 U.S. 17, 25-26; *Miller Hatcheries v. Boyer*, 131 F.(2d) 283 (C.C.A. 8); *cf U.S. v. American Trucking Ass'ns., Inc.*, 310 U.S. 534, 549), particularly since they are inconsistent with the language of the exemption provision, its legislative history, the case law, and with the Department's continued recognition of the exemption of processing of other commodities such as fruit packing and canning, canning dairy products, cotton ginning and tobacco stemming, which are equally industrialized. *Skidmore v. Swift*, 323 U.S. 134, 140; *Jewell Ridge Coal Corp. v. Local No. 6167*, 325 U.S. 161, 169. Furthermore, despite frequent inspections of Hawaiian sugar plantations to check on compliance with the Act through the years, the Department of Labor has never sought to enforce the overtime provisions of the Act with respect to employees of such sugar plantations.

2. *Processing Exemption*

The Petitioners were also exempt from the overtime provisions of the Act under Section 7(c), when they were engaged in hauling sugar cane from the fields to the mill on Respondent's fixed rail track, grinding such sugar cane into raw sugar and molasses, temporarily storing, loading and shipping such raw sugar and molasses, repairing, maintaining and servicing hauling equipment and facilities and mill equipment, and in any other incidental operations necessary and indispensable to the foregoing.

Petitioners and Respondent were engaged in just two things: producing sugar cane, and processing that cane into raw sugar and molasses.

Section 7(c) applies to a farmer who processes his own crops as much as to a processor who processes only the crops grown by others.[19] The language, insofar as relevant, exempts, without time limit, all employees in "any place of employment" where their employer is "engaged . . . in the processing of . . . sugarcane . . . into sugar (but not refined sugar) or into sirup". When the particular exemption in §7(c), as here, refers to an entire

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when engaged in activities such as those of Petitioners. To the contrary, in administering the Act, officials of the Department have always treated such employees as exempt.

[19] The court below also recognized that the agriculture exemption in §13(a)(6) and the processing exemption in §7(c) overlap in many significant respects (Pet. App., p. 84, note 4). The Department of Labor has also repeatedly recognized such overlapping. Cf. ¶10(b) of *Interpretative Bulletin No. 14* with ¶¶15-21 thereof. See also WHM 35:754-755. The two exemptions overlap because §13(a)(6) is an exemption from both the wage and hour provisions of the Act, while §7(c) is an exemption from the hour provisions alone. Congress intended that if a farmer processes his own crops, such processing should be wholly exempt under §13(a)(6). On the other hand, if a person engages in the business of processing crops of others as well as his own crops, such person was to enjoy only the more limited §7(c) exemption in that connection.

industry, the exemption applies to all operations which are functionally necessary and indispensable to that industry even though performed in several separate buildings. *Heaburg v. Independent Oil Mill, Inc.*, 46 F. Supp. 751 (W.D. Tenn.); *Abram v. San Joaquin Cotton Oil Co.*, 49 F. Supp. 393 (S.D. Calif.).

Each of Petitioner's processing activities in issue was necessary and indispensable to the processing of the sugar cane; *e.g.*, the production of steam and power for use in performing the processing operations, the repair and maintenance of the mill and its equipment (in the adjoining repair shops as well as in the mill), the storage of supplies for the mill, laboratory work for the mill, and the hauling of raw materials, i.e., the sugar cane, to the mill. *E.g.*, R. 85-86, 90, 205-206, 212-220, 223-226, 227-231, 243-248, 266-273, 286-288, 318-319.

Furthermore, the term "place of employment" as used in Section 7(c) has always been held to include the roads and railways over which raw materials are transported to the processing plant and finished products away from it, as well as to include the several separate buildings in which the processing operation and other incidental operations necessary and indispensable thereto are carried on, if in fact the employer conducts such operations in several buildings. See cases and administrative interpretations referred to *infra*, p. 22. The term "place of employment" cannot mean simply a single building, regardless of the essential requirements of the operation.

Thus, Petitioners engaged in hauling sugar cane from the fields to the mill were working in the "place of employment" where Respondent was engaged "in the processing of . . . sugarcane". And similarly other Petitioners, such as those who repaired the hauling and process-

ing facilities, stored the Respondent's supplies, or did laboratory or office work, were working in such "place of employment". The buildings in which they worked, including the mill, service shops, storage places for Respondent's supplies, and other buildings, were located in a small, compact and contiguous area of the plantation (R. 38, 721, 723). All the repair, laboratory, warehouse and shipping activities of Respondent took place within 300 feet of the mill building proper (R. 94 and 723).[16]

The foregoing conclusions are confirmed by the Department of Labor's interpretations. *Interpretative Bulletin No. 14*, ¶¶ 14, 18, 22; WHM 35:551-555, 763, 769, 770-771, 772-773; *3 C.C.H. Labor Law Reporter*, ¶¶ 25,250.255, and 25,250.32; statement of Secretary of Labor at *Hearings on S. 2386 et al*, U. S. Sen. Comm. on Labor & Public Welfare, 80th Cong. 2d Sess., p. 183.[17] Any contrary views expressed by the Department in its *amicus* brief below are completely novel and contrary to the positions which the Department of labor has taken from the beginning under the Act.[18]

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[16] See *Calaf v. Gonzalez*, 127 F.(2d) 934, 936-937 (C.C.A. 1); *Bowie v. Gonzalez*, 117 F.(2d) 11, 17, 18-19 (C.C.A. 1); *Byus v. Traders Compress*, 59 F. Supp. 18 (W.D. Okla.); *Walling v. McCracken County Peach Growers*, 50 F. Supp. 900 (W.D. Ky.).

[17] The Section 7(c) exemption was also applicable to the Petitioners when engaged in making dwelling repairs and maintaining related domestic facilities, assuming that such activities constituted the production of goods for commerce. The Department of Labor has said that the Section 7(c) exemption applies not only to those employees processing sugarcane, but also to those employees whose operations are "a necessary incident" to sugarcane processing and who work in those portions of the premises devoted to sugarcane processing. WHM 35:551. If the Petitioners are deemed necessary to the production of raw sugar for commerce when engaged in these activities on the plantation, their operations were likewise "a necessary incident" to the processing of sugarcane on the same plantation for the same farmer.

[18] Where in the same workweek a Petitioner performed work that was not sufficiently close to commerce or to the production of goods for commerce to be considered covered by the Act at all

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the writ prayed should be denied.

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(e.g. work with respect to Respondent's dwelling houses or related domestic facilities), and also performed work that was exempt under Section 13(a)(6) or Section 7(c), he was obviously excluded from the overtime provisions of the Act. *Fitzgerald v. Kroger Grocery*, 45 F. Supp. 812 (D. Kans. 1942). The Department of Labor is in accord. WHM 35:768. The same rule applies where a Petitioner worked part of the workweek in an activity deemed exempt under Section 13(a)(6) and the remainder in an activity deemed exempt under Section 7(c). 3 *CCH Labor Law Reporter*, ¶24,105.27. Moreover, assuming that any of the activities of Petitioners was not exempt under either Section 13(a)(6) or Section 7(c), we submit that each Petitioner was nevertheless exempt in any workweek in which he did not engage in non-exempt activities for a substantial part of his time. In the case of many other exemption provisions in the Act the Department of Labor has allowed a tolerance of non-exempt work ranging from 20% to 49.9%. *E.g.*, 3 *CCH Labor Law Reporter* ¶23,301.04(b) (local retailing), ¶25,260.05 and 25,260.34 (local newspapers).

APPENDIX

ACTIVITIES ENGAGED IN BY EACH PETITIONER

1. *Field work and repair and maintenance of field equipment*: (i) preparation of land for planting, planting, ratooning, cultivation, fertilizing, irrigation, harvesting, and maintenance of field roads (Petitioners Maneja, Asuncion, Hayashi, K. Okouchi, Watanabe (R. 191-204) and Petitioner Crisostomo (R. 279-283)); (ii) repair, servicing, and maintenance of field equipment and implements, such as tractors, tractor auxiliary implements, caneloading machines, and pumps and other irrigation equipment (Petitioners last mentioned and also Petitioners Ezawa (R. 231-235), Reyher (R. 239-243), A. Robello (R. 273-276), Tanaka (R. 227-231), Takata (R. 243-248), Hironaka (R. 266-273), Yamada (R. 277-278), and Sunahara (R. 223-226)).

2. *Hauling and repair and maintenance of hauling equipment*: (i) hauling by narrow gauge railroad of sugar cane from fields to mill (Petitioner Holmberg (R. 205-206); (ii) hauling by truck on field roads of laborers and field supplies and equipment used for planting, ultivation and harvesting (Petitioners Guigui (R. 235-239), Vierra (R. 248-256), and Crisostomo (R. 279-283)); (iii) miscellaneous hauling such as hauling by truck of laborers, supplies, and equipment to different places on plantation (Petitioners Guigui (R. 235-239), Vierra (R. 248-256), and Crisostomo (R. 279-283)) (some of this latter type of hauling consisted of hauling from off the plantation to places on the plantation); (iv) repair, servicing, and maintenance of hauling equipment and facilities such as cane cars, locomotives, trucks, and the plantation railroad, including portable tracks (Petitioners K. Okouchi (R. 198-204), Holmberg (R. 205-206), Faria (R. 206-208), Sera (R. 208-210), T. Okouchi (R. 210-212), Claunan (R. 220-

223), Sunahara (R. 223-226), Tanaka (R. 227-231), Takata (R. 243-248), Mori (R. 264-265), Hironaka (R. 266-273), and A. Robello (R. 273-276)).

3. *Sugar Cane Processing and Repair and Maintenance of Processing Equipment*: (i) Processing of sugar cane at mill and temporary storage, loading, and shipment of raw sugar and molasses (Petitioner's Hernandez, Dumlao, Kondo, Cumlat, Lazo, and Kubo (R. 310-317); Carrit and S. Robello (R. 216-220); and Hamamoto (R. 317-318)); (ii) repair, servicing, and maintenance of mill and its equipment (Petitioners last mentioned and also Petitioners Oato (R. 212-216), Sunahara (R. 223-226), Tanaka (R. 227-231), Takata (R. 243-248), and Hironaka (R. 266-273)).

4. *The making of concrete irrigation flumes*, water supply pipe, blocks, and other concrete products required for use on the plantation (Petitioner Tsutsai (R. 257-258)).

5. *Storage of supplies and equipment* for field, hauling, mill, and repair activities of Respondent (Petitioner Yack Chun Lee (R. 318-319)).

6. *Laboratory work* for (i) field operations of Respondent (Petitioner Pacheco (R. 285-286)) and for (ii) hauling, processing, and activities referred to in "8", *infra* (Petitioner Fujiwara (R. 286-288)).

7. *Office work* (Petitioner Sakaguchi (R. 319-320)).

8. *Repair and maintenance of Respondent's dwelling houses* and the furnishing, maintaining, repairing, or servicing of related domestic services or facilities to or for the lessees of such dwelling houses (Petitioners Sakai (R. 256-257), Kashiwabara (R. 259-263), Mori (R. 264-265), Yamada (R. 277-278), Fernandez (R. 284), Crisostomo (R. 279-283), Oato (R. 212-216), Hironaka (R. 266-273), Guigui (R. 235-239), and Vierra (R. 248-256)).

Certain Petitioners performed work in only one group of activities in every workweek and are therefore listed only in that group. Other Petitioners who are listed in several categories performed one group of activities exclusively in some workweeks, but in other workweeks performed a substantial amount of work in two or more groups of activities. Still other Petitioners appearing in several groups did a substantial amount of work in many workweeks which fell into several groups, and in no workweek did work that fell into one group exclusively. In various instances Petitioners who did only minor amounts of work within a particular group of activities are not listed above as within the group. Complete information as to the work done by all of the Petitioners within the various groups appears in the District Court's findings of fact (R. 190 *et seq.*, 308 *et seq.*).

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

NOS. 357 AND 358

CIRACO MANEJA, *et al.*,
Petitioners,

v.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Respondent.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Petitioner,

v.

CIRACO MANEJA, *et al.*,
Respondents.

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(i) Hauling materials, supplies, equipment, or employees to and from the various fields on the Waialua plantation;

(ii) Hauling sugar cane produced by Waialua from the fields to the mill;

(iii) Grinding such sugar cane at the mill into raw sugar and molasses;

(iv) Temporarily storing, loading, and shipping such raw sugar and molasses;

(v) Repairing, maintaining and servicing (a) field implements, (b) hauling equipment and facilities, and (c) the mill and its equipment; and

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(ii) Temporarily storing, loading, and shipping such raw sugar and molasses;

(iii) Hauling sugar cane produced by Waialua from the fields to the mill and repairing, maintaining, and servicing equipment and facilities used in such hauling; and

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

NOS. 357 AND 358

CIRACO MANEJA, *et al.*,

Petitioners,

v.

WAIALUA AGRICULTURAL COMPANY, LIMITED,

Respondent.

WAIALUA AGRICULTURAL COMPANY, LIMITED,

Petitioner,

v.

CIRACO MANEJA, *et al.*,

Respondents.

BRIEF FOR WAIALUA AGRICULTURAL COMPANY, LIMITED.

Pursuant to Stipulation of the parties filed and approved on November 23, 1954, this brief covers the questions presented in both No. 357 and No. 358.

OPINIONS BELOW.

The opinion of the District Court (R. 748-822) is reported in 97 F. Supp. 198 and also in 10 WH Cases 287 and 20 Labor Cases ¶ 66,531.[1] The opinion of the Court of Appeals (R. 725-746) is reported in 216 F. (2d) 466 and also in 12 WH Cases 172 and 25 Labor Cases ¶ 68,404. The

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[1] The opinion also incorporated findings of fact and conclusions of law set forth at R. 190-307 and 308-320.

opinion of the Court of Appeals on petition for rehearing by Waialua Agricultural Company, Limited (hereinafter called Waialua) is reported in 216 F. (2d) 479 and also in 12 WH Cases 254 and 26 Labor Cases ¶ 68,645 (R. 746-747). The opinion of the Court of Appeals in a prior proceeding (R. 822-842) is reported in 178 F. (2d) 603.

JURISDICTION.

The judgment of the Court of Appeals herein was dated and entered on May 5, 1954 (R. 746). Waialua filed a timely petition for rehearing on June 2, 1954, which was denied by order dated and entered on June 24, 1954 (R. 747). On July 13, 1954, Mr. Justice Black entered an order extending until September 22, 1954 the time within which Ciraco Mareja *et al.* (hereinafter called the employees) might file a petition for certiorari (R. 843). The employees and Waialua separately filed petitions for certiorari (Nos. 357 and 358) on September 20, 1954. This Court granted both petitions on November 8, 1954 and consolidated the cases for argument (R. 843-844). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

STATUTORY PROVISIONS INVOLVED.

These cases arise under the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C. § 201 *et seq.*), hereinafter called the "Act". The pertinent provisions of the Act are as follows:

Section 3(b) defines "commerce" to mean—

> ". . . trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof".[2]

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[2] The Fair Labor Standards Amendments of 1949 (63 Stat. 910), effective January 25, 1950, made certain changes in Sections 3(b) and 3(j). No issue is presented herein under the 1949 Amendments, however, since this proceeding is solely concerned with application of the Act to the employees in specified workweeks in 1946 and 1947. *Infra*, pp. 8, 11-12.

Section 3(c) defines "State" to mean—

> ". . . any State of the United States or the District of Columbia or any Territory or possession of the United States".

Section 3(j) defines "produced" to mean—

> ". . . produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State".

Section 7(a) provides that no employer shall employ any of his employees "who is engaged in commerce or in the production of goods for commerce" for a workweek longer than 40 hours—

> ". . . unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed".

Section 13(a)(6) exempts from both the wage and hour provisions of the Act "any employee employed in agriculture . . ." Section 3(f) defines "agriculture" to include—

> ". . . farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, in-

cluding preparation for market, delivery to storage or to market or to carriers for transportation to market."

Section 7(c) provides that —

"In the case of an employer engaged . . . in the processing of . . . sugarcane . . . into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) [the overtime provisions of the Act] shall not apply to his employees in any place of employment where he is so engaged . . ."

Section 16(b) (as amended by Section 5(a) of the Portal to Portal Act of May 14, 1947, 61 Stat. 87), provides that —

"Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action".

Also involved is Section 2201 of Title 28, United States Code, which provides:

"In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

QUESTIONS PRESENTED.

In No. 358.

1. Whether the District Court abused its discretion in entertaining Waialua's declaratory judgment suit to resolve and terminate the long-standing controversy between the parties as to the application of the Fair Labor Standards Act to the employees, who were employed by Waialua in enumerated tasks [3] during specified workweeks in 1946-1947 and who had counterclaimed under Section 16(b) of the Act for overtime compensation and damages allegedly due for such workweeks.

2. Whether the Court of Appeals erred in reversing the District Court and in ordering dismissal of Waialua's declaratory judgment suit on the ground of alleged absence of a "case or controversy", in that the parties were in "apparent collusion" because they stipulated all material facts and separately failed to contest the constitutionality of the Act as applied to agricultural employment, where the actual controversy between the parties involved the application of certain statutory exemptions on undisputed facts and where the constitutional issue was insubstantial as shown by prior decisions of this Court.

In No. 357.

3. Whether the employees were exempt from the overtime provisions of the Act by virtue of Sections 13(a)(6) or 7(c) during all or any of specified workweeks in 1946-1947, while engaged in hauling, processing of sugar cane

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[3] See Appendix A, *infra*, pp. 87-89, for a detailed summary of the various tasks performed by each employee here involved.

grown on the plantation, repairing equipment used in such operations, and in other enumerated tasks listed in Appendix A, *infra*, pp. 87-89.

4. Whether the employees were engaged in interstate commerce or in the production of goods for interstate commerce, when they were employed in repairing and maintaining Waialua's dwelling houses located on Waialua's plantation, and in furnishing, maintaining, repairing or servicing related domestic services or facilities to or for the lessees of such dwelling houses, who included both employee of Waialua and others; and if so engaged, whether such employees were nevertheless exempt from the overtime provisions of the Act by virtue of Section 13(a)(6).

5. If during the same workweek an employee engaged in activities exempt under Section 13(a)(6) or Section 7(c) of the Act and did not engage for a substantial part of his time in the same workweek in an activity not so exempt, whether he was exempt for that workweek from the overtime provisions of the Act by virtue of Section 13(a)(6) or Section 7(c).

STATEMENT OF THE CASE.

A. PROCEDURAL BACKGROUND.

1. Proceedings in Previous Appeal.

In April 1947 a predecessor corporation to Waialua[4] instituted a class action for declaratory relief in the United States District Court for the District of Hawaii, pursuant to Federal Rule 23(a) and Sections 24 and 274d of the Judicial Code (now 28 U. S. C. §§ 1337, 2201). The defendants named in that original complaint were employees of Waialua, a union which was the collective bargaining representative of the employees, and an official of that union. Waialua prayed in that action for a declaratory judgment to resolve the controversy between the parties

[4] Waialua was later duly substituted for said predecessor corporation (R. 751).

as to application of the overtime provisions of the Act to the employee defendants and all its other employees similarly situated. Waialua at that time was threatened with a multiplicity of suits under Section 16(b) of the Act, both in Federal and Territorial courts, for liquidated damages as well as unpaid overtime compensation (R. 12-13, 16). The defendants filed a counterclaim under Section 16(b) of the Act, to recover unpaid overtime compensation for work performed by the employee defendants and to recover liquidated damages, costs and attorney's fees. The District Court ordered a separate trial of the counterclaim, to take place subsequent to determination of the issues presented by the declaratory judgment suit.

Following trial of the action for declaratory judgment, the District Court entered judgment on the merits, partly for defendants and partly for Waialua. 77 F. Supp. 480. Both parties appealed to the United States Court of Appeals for the Ninth Circuit, which reversed and remanded (R. 822-842). The Court of Appeals stated that the judgment of the District Court was "a nullity" because, in the Court's view, it gave "no mandate or command" as to the employee defendants and therefore did not declare their rights with the positiveness required of a judgment; and because the judgment was deemed unsupported by sufficiently detailed and specific findings of fact (R. 825-827, 829, 837). The Court of Appeals also criticized the class representation aspects of the action, the joinder of the union and a union official as parties defendant, the stipulation of all facts, the failure to place time limits on the scope of the action, and the failure to adduce testimony by any employee defendant (R. 837-840). The Court of Appeals concluded:

> "Refusal to entertain a petition for declaratory judgment is peculiarly within the discretion of the Trial Court. If a 'concrete set of facts' would be supplied to which the statute could be fitted and thereby 'an adequate and effective judgment' rendered, it would be proper to proceed. For such a judgment

would satisfy the necessity of firmly founded fact findings and the elements requisite for a plea of res judicata in subsequent litigation . . . However, we leave this as a suggestion only and not as a direction . . .

". . . The cause is therefore remanded for further proceedings in accordance with this opinion, either for dismissal for the reason that no ground has been shown for entry of a declaratory judgment or to permit the entry of detailed findings as to each employee defendant, based upon an adequate record." (R. 841, 842).

This Court denied certiorari on petition by Waialua. 339 U. S. 920.

2. Proceedings in Present Appeal.

After remand, Waialua amended its bill of complaint, in response to the criticisms of the Court of Appeals, by eliminating the class representation aspects of the suit, and by omitting as parties defendant the union, the union official, and certain employees (R. 4-5). The amended complaint was filed against 42 named individuals who were employed on Waialua's plantation during workweeks from November 20, 1946 through September 14, 1947; and prayed for a declaratory judgment to resolve Waialua's prolonged and continuing controversy with each of the defendants as to the application of the overtime provisions of the Act to his specified activities in the aforesaid workweeks (R. 6-14). Waialua invoked the jurisdiction of the District Court under § 24 and § 274d of the Judicial Code as amended (now 28 U. S. C. §§ 1337, 2201), and contended in substance that all the defendants were exempt from the wage and overtime provisions of the Act during the workweeks involved by reason of the exemptions under Sections 13(a)(6) and 7(c) (R. 11-12, 13-14). Defendants filed their "Answer to Amended Complaint, and Counter-Claim, Cross-Claim, and Cross-Complaint", which continued to set up their alleged action under Section 16(b) of the Act for alleged unpaid overtime compensation, liquidated dam-

ages, costs and attorney's fees (R. 16, 18-19, 24-26).[5] The averments of the counterclaim were put in issue by Waialua's "Reply and Answer to Counter-Claim, Cross-Claim, and Cross-Complaint" (R. 20-24).

The District Court entered an order under Federal Rule 42(a) requiring that all claims and issues presented in both suit and counterclaim be heard and tried jointly (R. 5-6, 750). Upon the joint trial, a precise record was adduced showing with respect to each employee the particular workweeks worked by him during the period covered by the litigation; the number of hours worked by him in each such workweek; his compensation in each such workweek, including the amount of overtime compensation paid him and the number of hours for which such overtime compensation was paid; and the duties performed by him in each such workweek. Furthermore, while all material facts were set forth in a lengthy Stipulation of the parties,[6] 22 of the 42 defendants testified orally, and all supported the truth and accuracy of the Stipulation except in certain minor respects (*e.g.*, R. 409-410, 423-424, 434-435, 446-447, 458-459; see also R. 615-617, 619, 620-621). In such minor respects the Stipulation was thereafter amended by the parties to conform with the oral testimony.[7] Thereafter, the parties briefed and argued their opposing interpretations of the statutory provisions involved.

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[5] The counterclaim stated that it was asserted under the Fair Labor Standards Act (R. 18). The District Court stated that the counterclaim was filed under Section 16(b) of the Act (R. 749-750). The allegations of the counterclaim and the prayer therein clearly establish it is an action under Section 16(b) of the Act. Indeed, the employees filed for the record the signed consents and authorizations to become parties to the litigation which are uniquely required by Section 16(b). See pp. 31a to 31pp of the original transcript of record herein, certified by the Court of Appeals under Rule 21(1) (hereinafter called the Certified Transcript).

[6] See pp. 32 to 864 of the Certified Transcript.

[7] See amendment to Stipulation filed September 5, 1950, pp. 2026-2031 of the Certified Transcript. See also R. 618-619.

The District Court entered detailed findings of fact and conclusions of law with respect to all claims and issues presented in the trial of the consolidated actions (R. 190 *et seq.*, 308 *et seq.*). Such findings and conclusions showed as to each employee, in each of the workweeks in controversy, a detailed description of the work performed by him, the number of hours worked by him, his regular hourly rate of pay, whether he had received overtime compensation for hours of work in excess of 40, whether he was held exempt under Section 13(a)(6) or Section 7(c), and the amount of unpaid overtime compensation, if any, which the court found to be due and owing. The District Court thereafter entered a single judgment (R. 321 *et seq.*) entitled "Declaratory Judgment and Judgment Awarding Defendants Overtime Compensation, Liquidated Damages, Costs, and Attorney's Fees". The Judgment was divided into two parts. Part I was called "Declaratory Judgment" (R. 322) and Part II was entitled "Judgment Awarding Defendants Overtime Compensation, Liquidated Damages, Costs, and Attorneys' Fees" (R. 336). Thus the District Court's judgment disposed of all claims and issues raised in Waialua's suit for declaratory judgment and in the employees' counterclaim under Section 16(b) of the Act.

The Court of Appeals, while recognizing that its earlier instructions and suggestions had been followed on remand (R. 727-728, 731), nevertheless reversed the judgment of the District Court for "error in approach" (R. 726), holding that the parties were in apparent collusion because they had stipulated all material facts and because neither had contested the constitutional validity of the Act under the commerce clause as applied to the agricultural employment of the employees here involved (R. 726, 728, 734, 736, 742, 743, 747). The Court of Appeals thereupon directed that "the proceeding be dismissed for abuse of discretion in entertaining a petition for declaratory judgment here and attempting to settle a question of jurisdictional and constitutional construction therein" (R. 740-741). The

Court of Appeals then filed its judgment providing that "the judgment of the said District Court in this cause be, and hereby is reversed for proceedings in accordance with the opinion of this court" (R. 746).

On June 2, 1954 Waialua filed in the Court of Appeals its petition for rehearing, praying that the opinion and judgment be modified to clarify the Court's disposition of the counterclaim in relation to the dismissal of the suit for declaratory judgment. On June 24, 1954 the Court of Appeals denied the petition for rehearing. Its memorandum opinion stated that, "The Court construes what is called the cross-complaint as a petition also for declaratory relief. This is left undismissed by this Court". As to further proceedings therein, however, the Court's opinion stated that, "The parties and the Trial Court . . . should be mindful of the fact that this Court has held that the entire cause was tainted by apparent collusion between the parties in the attempt to obtain an advisory opinion upon constitutional questions" (R. 747).

B. FACTUAL BACKGROUND.

All material facts are set forth in a lengthy Stipulation of the parties.[8] Waialua operates a sugar plantation on the Island of Oahu, Territory of Hawaii. Since 1898 it has been engaged almost exclusively in growing, cultivating and harvesting sugar cane on land owned or leased by it (R. 31), and in processing such sugar cane into raw sugar or molasses on the plantation where grown (R. 30, 31, 38-39, 721). The employees are 40 named individuals[9] who

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[8] The portion of the Stipulation containing an over-all description of Waialua's plantation and its operations is set forth in the record (R. 27-123, 129-178, 721-725). The entire Stipulation is set forth in the Certified Transcript. *Supra*, notes 6 and 7.

[9] The complaint in the District Court named 42 individuals as defendants, but two of these were held exempt from the Act during the period involved, and no appeal was taken from such holding (R. 308-310, 325, 339).

were employed by Waialua on its plantation between November 20, 1946 and September 14, 1947 (R. 9-10, 18, 123), performing various tasks summarized in Appendix A, *infra*, pp. 87-89.

Waialua processes no cane except that grown by itself on its plantation (R. 84). Neither Waialua nor any of its employees, including those here involved, engages in any sugar refining operations (R. 32). Substantially all the land (9,663 acres) now devoted to sugar cane production has been owned or leased and used by Waialua for this purpose since 1910 (R. 33).

On its plantation Waialua prepares and plows the fields for the planting of sugar cane; plants sugar cane; "ratoons" the fields;[10] cultivates sugar cane; applies fertilizer to the cane fields; irrigates cane fields by a network of irrigation ditches and water storage reservoirs; harvests sugar cane; maintains a network of field roads (which criss-cross the cane-growing land (R. 35)) for hauling employees, field supplies and equipment throughout the plantation by truck; and hauls sugar cane by a narrow-gauge railroad (which also criss-crosses the cane-growing land (R. 35)) from the fields where grown to Waialua's mill.[11] These integrated operations are more fully described in the Stipulation (R. 39-66).

Waialua's mill, located on its plantation (R. 38), grinds the sugar cane grown on its plantation into raw sugar and molasses. Waialua then loads the bagged raw sugar and molasses for shipment to the continental United States or stores such products temporarily in the sugar warehouse or

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[10] "Ratooning" refers to operations performed after a field is harvested to prepare it for the growing of another crop (R. 42).

[11] The parties have stipulated that the term "mill" means the building and equipment of Waialua used in the actual processing of sugar cane into raw sugar, including cane carrier, cane cleaning plant and scales, crushing plant, boiling house, fire room, power plant, sugar warehouse and molasses tanks, and all equipment therein (R. 31).

molasses tanks (R. 66-82, 84-85). Waialua's operations and the work of its employees are completed by loading the bagged raw sugar and the molasses into railroad cars owned and operated by an independent carrier at the site of the mill, and by pushing such cars from such site onto a nearby spur of the carrier (R. 31-32, 59).

Waialua has equipped and maintains complete service shops for prompt minor repairs and emergency work and major overhaul of field, hauling, and processing machinery, equipment and facilities indispensable to its growing, hauling and processing operations. These service repair shops are located on the plantation, in an area extending not more than 300 feet from the mill building proper (R. 94, 723).

The foregoing operations, and the employees' work therein, are highly integrated and interdependent. Sugar cane is very perishable and starts to deteriorate immediately after being cut. Consequently, it must move "continuously from field to crushing mill", there to be processed into raw sugar within a few hours after it is cut, so that it will not spoil (R. 33, 731). All of Waialua's cane-growing lands are operated as an integrated farming unit and single enterprise. Employees working in the fields move from one area to another, depending upon the program of plowing, planting, irrigating, fertilizing, harvesting, etc. Waialua's growing, harvesting and processing of cane and the marketing of the raw sugar constitute one continuou- and year-round operation (R. 35-36). Machinery breakdowns in the mill may result in a shutdown of the entire mill, which would necessitate a discontinuance of harvesting and hauling operations until mill repairs are complete. Breakdowns of harvesting machinery or of cane hauling facilities in turn may result in a shutdown of the entire mill (R. 94).

Waialua owns and maintains 820 dwelling houses, all of which are located on the plantation (R. 120). Waialua provides the occupants of such dwelling houses with various facilities and services, including firewood, water, electricity,

sewage disposal, street maintenance and cleaning, and recreational facilities (R. 118, 119). These dwelling houses are occupied by 3,373 persons, of whom 2,952 are employees and pensioners of Waialua and their families. The remaining 421 persons living in such houses are lessees and their families who are not employed by Waialua and who either work off the plantation or who own, operate or are employed by independently controlled businesses (R. 120-121). No employee, including any of those herein, is required as a condition of employment to live on the plantation or in plantation dwelling houses or to use any service or facility which Waialua furnishes or renders its employees (R. 120). The relationship between Waialua and its employees by virtue of the occupancy of such houses, including each employee herein, is that of landlord and tenant (R. 120).

Pursuant to the Territorial wage and hour law (*Revised Laws of Hawaii*, 1945, Title 9, Ch. 75, § 4354) and also pursuant to the applicable collective bargaining contract (R. 141, 143), Waialua paid overtime to all employees for hours worked by them in excess of 48 in a workweek. Therefore, the sole issue involved herein concerns the payment of overtime compensation to the employees only for hours in excess of 40 per week up to and including 48 (R. 745, note 42). No question of minimum wage payments is involved herein, since the lowest paid employee received an hourly rate substantially in excess of the 40¢ minimum required by the Act in 1946-1947, the period here in issue.[12] The hourly wage rates of the employees ranged from the 76¢ paid to employee Fernandez (R. 284) to $1.71 paid to em-

[12] Under the Sugar Act of 1937, as amended, 50 Stat. 909, 7 U. S. C. § 1131(c), the Secretary of Agriculture published a minimum of 42.4¢ per hour for Hawaiian sugar cane workers for 1946, based upon the actual wages paid such workers as averaged over the year. Since 1947, the Secretary's wage determinations have required the payment of wages agreed upon by the collective bargaining contracts between the plantations, including Waialua, and the union of the employees here involved. See *Agricultural, Manufacturing and Income Statistics for the Domestic Sugar Areas* (U. S. Department of Agriculture, 1954), p. 146.

ployee Tsutsui in the workweek commencing August 18, 1947 (R. 258).

In substance the District Court held:

1. Each employee was engaged in commerce or in the production of goods for commerce, within the meaning of Section 7(a) of the Act, during each workweek in issue (R. 322).

2. Of all the activities in issue (described in Appendix A, *infra*, pp. 87-89), the agriculture exemption in Section 13(a)(6) exempted the employees only while engaged in certain specified field activities, namely preparation of land for planting, planting, ratooning, cultivating, fertilizing, irrigating, and the harvesting operation only up to the point where cars loaded with cut cane were moved from the fields on portable track to the fixed line of Waialua's narrow gauge railroad (R. 191-192, 194, 196, 198, 201, 308-310, 789-790).

3. The processing exemption in Section 7(c) exempted only the employees working in the mill building while operating processing machinery, repairing such machinery either during the time the mill was operating or during the weekend shutdown, or bagging, loading and shipping raw sugar (R. 213, 310-318, 796-800).

4. If in any workweek an employee performed work which was exempt from the overtime provisions of the Act by virtue of Section 13(a)(6) or Section 7(c), the exemptions would be lost in that workweek if the employee also did any other work not so exempt, regardless of how insubstantial such other work was (R. 336).

The Court of Appeals disapproved as clearly erroneous many of the essential findings of fact by the District Court (*e.g.*, R. 726-727, 731-735, 742-743), and concluded that each employee was totally exempt from the Act under the agriculture exemption in Section 13(a)(6) in each workweek in issue (R. 726-727, 730-731, 732-735, 736, 739, 741 *et seq.*). The Court of Appeals accordingly did not deem

it necessary to consider the processing exemption under Section 7(c) (R. 746, note 45). However, the opinion and judgment of the Court of Appeals went off on jurisdictional and constitutional grounds. *Supra,* pp. 10-11.

SUMMARY OF ARGUMENT

In No. 358

I.

The District Court did not abuse its discretion in entertaining Waialua's declaratory judgment suit to resolve the controversy between the parties over the meaning of the Fair Labor Standards Act as applied to particular employees engaged in defined tasks during specified workweeks. The pleadings, Stipulation of the parties, and the pendency of the counterclaim herein for claimed overtime compensation, liquidated damages and counsel fees disclose an immediate and continuing controversy concerning the application of the Act. This Court has repeatedly approved application of declaratory judgment procedure to such controversies. *Tennessee Coal, Iron & R. Co.* v. *Muscoda Local*, 321 U.S. 590, 592; *Jewell Ridge Coal Corp.* v. *Local #6167*, 325 U.S. 161. Dismissal of Waialua's suit by the Court of Appeals has nullified Waialua's earnest efforts since 1947, pursuant to the Judicial Code and the Federal Rules of Civil Procedure, to obtain a declaratory judgment that would conclusively terminate the controversy with petitioner-employees.

The Court of Appeals in its first review of the case in 1949 did not direct dismissal of the declaratory judgment suit, but remanded the cause for further proceedings including, as one suggested alternative, "entry of detailed findings as to each employee defendant, based upon an adequate record". No-where in its first opinion did the Court of Appeals imply that the action might be reversed upon the entirely new basis of alleged "collusion" advanced in its second opinion. In the second trial the

parties and the District Court meticulously complied with every requirement and suggestion of the Court of Appeals in its 1949 opinion, and manifestly satisfied established standards for declaratory relief. E.g., *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227, 239-242; *Altvater* v. *Freeman*, 319 U.S. 359, 363-366. The Court of Appeals accordingly erred in reversing the District Court for alleged abuse of discretion in entertaining Waialua's suit.

II.

Waialua's suit was not rendered collusive because the parties stipulated to most of the facts,—a practice favored by the Federal Rules (e.g., Rules 16, 36, 57) and frequently approved by this Court in litigation under the Act. *Williams* v. *Jacksonville Terminal Co.*, 315 U.S. 386, 391; *Rutherford Food Corp.* v. *McComb*, 331 U.S. 722, 725, 729. The Court of Appeals likewise erred in finding "apparent collusion" in the *bona fide* assumption by the respective parties below that the employees (except those engaged in mill village work) were engaged in the production of goods for interstate commerce. Contrary to the views expressed by the Court of Appeals, the production of agricultural commodities destined for interstate movement is manifestly within the constitutional power of Congress, *Mandeville Farms* v. *Sugar Co.*, 334 U.S. 219, 236-237, and within the commerce coverage of the Act, *Farmers Irrigation Co.* v. *McComb*, 337 U.S. 755, 759. Established practice and policy approve rather than condemn the parties' failure to raise insubstantial constitutional issues. *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U.S. 129, 136-137. Waialua's suit was thus properly founded upon the interpretation of the statutory exemptions under Sections 13(a)(6) and 7(c), to which the Court of Appeals should have addressed itself. The fact that this proceeding is decisive of similar problems affecting all Hawaiian sugar plantations (and large segments of continental agriculture) simply contributes to the

desirability and importance of declaratory relief as prayed by Waialua.

III.

Since the judgment of the Court of Appeals directed dismissal of Waialua's suit on erroneous jurisdictional and constitutional grounds, the judgment should be reversed, with appropriate directions.

SUMMARY OF ARGUMENT

In No. 357

The stipulated facts show that Waialua's operations, insofar as they constitute the production of goods, are confined to the growing of sugar cane and the processing of that cane into raw sugar and molasses in unified, synchronized, integrated operations on its own plantation. All such operations are exempt under the plain language of Section 13(a)(6) or Section 7(c) or both.

IV.

The Court of Appeals correctly concluded that the employees were exempt from the overtime provisions of the Act under Section 13(a)(6) because they were "employed in agriculture", as defined in Section 3(f), when engaged on Waialua's plantation in (i) hauling activities on the network of field roads and the narrow-gauge railroad tracks which criss-cross the cane growing fields; (ii) processing sugar cane grown on the plantation; (iii) repairing field implements, and also equipment used in hauling and processing operations; and (iv) other enumerated tasks listed in Appendix A, *infra*, pp. 87-89.

The statutory definition of "agriculture" in the Act is divided into two distinct branches. *Farmers Irrigation*

Co. v. *McComb*, 337 U.S. 755, 762-763. The first distinct branch—the primary meaning—is "farming in all its branches", illustrated by "the cultivation and tillage of the soil" and "the production, cultivation, growing, and harvesting of any agricultural . . . commodities". The second distinct branch of the agriculture definition—the broader meaning—includes "*practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm, incidently to or in conjunction with 'such' farming operations*", including "preparation for market, delivery to storage or to market or to carriers for transportation to market." *Farmers Irrigation Co.* v. *McComb, supra.* [Emphasis supplied]. Under the statutory language, such practices are exempt if they are either incident to *or* in conjunction with the farming operations; they do not have to be both.

Functionally, the various integrated activities of Waialua's employees represent common, everyday activities performed by many American farmers and farms. Waialua is obviously a "farmer" within the meaning of the "agriculture" exemption because it owns and operates a farm, on which it cultivates and tills the soil, producing, growing and harvesting sugar cane, an agricultural commodity. Waialua's employees, when engaged in these activities, clearly fall within the first distinct branch of the agriculture definition. The perishable nature of sugar cane requires that it be processed into raw sugar within a few hours after it is cut and within a few miles of where it is grown. Accordingly, the hauling, processing and other activities of Waialua—the grower of the sugar cane—constitute "practices . . . performed by a farmer . . . as an incident to or in conjunction with" the enumerated field operations performed by Waialua, and therefore come within the second branch of the agriculture definition. Further, such hauling, processing, etc. activities are all performed—except in minor and sporadic instances—on Waialua's farm, an integrated and contiguous area

on which Waialua cultivates, grows and harvests sugar cane, and for this additional reason such activities are within the second branch of the agriculture definition. Waialua processes only the sugar cane which it grows on its own farm. The processing of farm commodities is incidental to or in conjunction with the farming operation by which the commodities are produced. *Farmers Irrigation Co.* v. *McComb*, 337 U.S. 755, 766, note 15. Where, as here, such processing is done both by the farmer, and on a farm, on the commodities grown on that farm, it is incidental to or in conjunction with that farmer's operations. This is equally true of Waialua's hauling and other activities here involved.

In the *Farmers Irrigation* case, employees of a mutual irrigation company were held non-exempt under the first branch of the "agriculture" exemption because the Company was a separately organized corporate entity which owned no farms and raised no crops; and they were held non-exempt under the second branch because the irrigation work itself was not done on a farm or by farmers. Waialua's employees here involved, however, are employed on the farm by Waialua, a farmer, and their activities are all in conjunction with and incident to the integrated farming operations.

The legislative history of the agriculture exemption reinforces its comprehensive language. Beginning with a broad definition of agriculture in the original bill as reported to the Senate, Congress made the exemption more and more inclusive as the bill worked its way through to final passage. Congress clearly expressed the legislative purpose to exempt such processing operations as milk bottling, fruit packing, cotton ginning, hog slaughtering, and sugar cane grinding, when performed by the farmer upon his own produce. Congress underscored that intention by striking out limiting phrases such as "ordinarily" performed by a farmer and by adding sweeping language exempting all practices performed "in con-

junction with" as well as "incident to" farming operations, whether by a farmer or "on a farm", down to and including "preparation for market", "delivery to storage", and "delivery . . . to market or to carriers for transportation to market". Congress drew no distinction between large and small farms or between hand labor and mechanized farms. Congress legislated with full appreciation of the accelerating pace of technology in American agriculture. Repeatedly since the original enactment in 1938, Congress has declined to deny the exemption to so-called "mechanized" or "industrialized" agriculture, notwithstanding arguments presented on behalf of employees on Hawaiian sugar plantations by the union representing the employees here involved.

Moreover, the exemptions in Sections 7(c) and 13(a)(10), which were granted to non-farmer processors of agricultural commodities in order to spare the farmer additional costs, emphasize the Congressional intent to exempt operations by farmers themselves, as comprehensively defined in Section 3(f), where additional costs would be even more direct.

The decisions of the First Circuit relied upon by the employees (*Bowie* v. *Gonzalez*, 117 F. (2d) 11 and 123 F. (2d) 387; *Calaf v. Gonzalez*, 127 F. (2d) 934 and *Vives* v. *Serralles*, 145 F. (2d) 552) do not conflict with the conclusions of the Court of Appeals below that the employees fell within the agriculture exemption. The First Circuit holds that employees employed by sugar cane plantations are not exempt when they are hauling or processing sugar cane not grown by their own employer (see *Puerto Rico Tobacco Marketing Coop. Ass'n.* v. *McComb*, 181 F. (2d) 697, 701), but are exempt when they are hauling or processing sugar cane grown by their own employer on his own farm.

The original administrative interpretations of the United States Department of Labor uphold the exemption of all employees here involved. The Department partly changed

its position by announcing in 1941 that the exemption does not apply to sugar mill employees even though they grind only cane grown by the sugar mill owner in his own fields. Such change is not persuasive because it did not represent contemporaneous construction of a new statute; it was based upon an erroneous interpretation of *Bowie* v. *Gonzalez, supra;* and it was inconsistent with the continued exemption by the Department of the processing of other commodities, such as fruit packing and canning. Significantly, the Department has never sought to enforce the provisions of the Act with respect to employees of Waialua or any other sugar plantation in Hawaii when engaged in the activities here in question, but has always treated such employees as exempt.

V.

Assuming that any employees are held non-exempt under the agriculture exemption provided in Section 13(a)(6), such employees were exempt from overtime requirements by reason of the year-round exemption of sugar cane processing in Section 7(c) of the Act. While that section was not written into the Act for the purpose of exempting the farmer as such, nevertheless by its terms it applies as much to a farmer who processes his own crops as to a processor who processes the crops grown by others.

Section 7(c) imposes two requirements which are fully satisfied here. *First*, Waialua is engaged in "processing . . . sugar cane . . . into sugar". Such processing embraces all activities customary (R. 85-86) and necessary thereto, such as generating steam and power required for the processing operations, repairing the mill on the plantation and its equipment, storing supplies for the mill, laboratory work for the mill, and hauling sugar cane from the fields to the mill. When the employees are engaged in such activities, they are performing work just as necessary and indispensable and as much related to sugar cane processing, as when they watch gauges in the boiling house of the mill

or otherwise operate the processing machinery. *Second*, Waialua's employees work in the "place of employment" where Waialua is engaged in processing. The term "place of employment" includes the several separate buildings and facilities whereby Waialua carries on the actual processing and related activities necessary thereto, including hauling to and from the processing mill. The various buildings on the plantation used for repair, laboratory, warehouse and shipping purposes are located in a compact area within 300 feet of the mill building proper.

These conclusions are sustained by the applicable precedents and administrative interpretations. The statutory language exempts all sugar cane processing, unlike other processing exemptions provided in Section 7(c), which exempt only particular isolated operations.

VI.

The employees, when repairing dwellings and maintaining related domestic facilities on the plantation, were not engaged in interstate commerce, or in occupations necessary to the production of goods for such commerce. The dwellings and related services in the Waialua "villages" were originally established on the plantation because there were no residential facilities otherwise conveniently available. The village of Haleiwa has since grown up as an independent community off the plantation, located about one mile from Waialua village, providing residential, retail and service facilities for Waialua employees and others on the Island of Oahu. No employee of Waialua is required to live on the plantation or in plantation houses or to use any service or facility furnished by Waialua; and indeed some of Waialua's employees, including some employee-petitioners, live off the plantation and in houses not owned or supplied by Waialua. Many persons living in such houses are not employed by Waialua, and either work off the plantation or own, operate or are employed by independently controlled businesses. The dwelling facilities

are rented on a cash basis, and the relationship between Waialua and the occupants is that of landlord and tenant. The employees are engaged on houses and services and facilities which are not themselves produced for or shipped in interstate commerce, nor are they used in or devoted to the production of goods for interstate commerce. They serve the personal needs of the occupants when the latter are not engaged in producing goods for interstate commerce. Findings by the District Court contrary to or inconsistent with the above are unsupported by the evidence and clearly erroneous.

None of these activities has such a "close and immediate tie with the process of production" of goods for commerce as to be deemed "necessary" to such production. *Kirschbaum* v. *Walling*, 316 U. S. 517, 525. When engaged in such activities, the employees are even further removed from production for commerce than the maintenance employees of the large office building who were excluded from coverage in the *Callus* case, 325 U. S. 578, although such employees actually furnished services facilitating the interstate operations of the tenants during office hours. The work in question is as remote from interstate commerce as that of plumbers, house painters, and others in local trade in innumerable villages in the United States. The Act was designed to leave such local business to the protection of the states. *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 570. Such activities are subject to the Territorial Wage and Hour Law rather than the Federal Act.

Coverage under Section 3(j) of the Act requires that the activities be "necessary" to the growing and processing of Waialua's sugar cane, while exemption under Sections 13(a)(6) and 3(f) requires only that the activities be carried on as "an incident to or in conjunction with" Waialua's farming operations. Hence, if such activities are covered by Section 3(j), they are necessarily exempt under Sections 13(a)(6) and 3(f).

VII.

Assuming that any of the employees' activities is not exempt under either Section 13(a)(6) or Section 7(c), an employee is nevertheless exempt in any workweek in which he does not devote a substantial part of his time to non-exempt activities. The Department of Labor has allowed a tolerance of non-exempt work ranging from 20% to 49.9% in the case of many other exemption provisions in the Act, such as those for fisheries and local newspapers. The broad scope intended by Congress for the exemptions under Sections 13(a)(6) and 7(c) would be effectively denied unless a tolerance of non-exempt work is also accorded under those exemptions.

ARGUMENT IN NO. 358.

I.

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ENTERTAINING WAIALUA'S DECLARATORY JUDGMENT SUIT.

Waialua's suit for declaratory relief presents an actual and important controversy concerning the legal relations between Waialua and the employees under the Act, which would be conclusively terminated by a declaratory judgment. The pendency of the employees' counterclaim herein, which the court below declined to dismiss (R. 747), is itself conclusive evidence of the serious, adversary, immediate and continuing controversy between the parties concerning the interpretation and application of the Act to particular employees engaged in clearly defined tasks during specified workweeks.

The existence of an adversary proceeding is apparent from examination of Waialua's Amended Complaint (R. 10-14); the employees' Answer and Counterclaim (R. 16, 18-19); Waialua's Reply (R. 20-24); the Stipulation entered into by the parties (R. 37); Waialua's Statement of Points on Appeal (R. 673 *et seq.*); and other detailed contentions of the parties in the two courts below. The cir-

cumstances are comparable to those in *Tennessee Coal, Iron & R. Co.* v. *Muscoda Local*, where "many persons in the class of the defendants are making actual claims upon the several plaintiffs for overtime compensation, based on the contention made by defendants in these actions." 40 F. Supp. 4, 6 (N. D. Ala.) *aff'd* 135 F. (2d) 320 and 137 F. (2d) 176 (C. C. A. 5), *aff'd* 321 U. S. 590.

Under applicable decisions of this Court, it was manifest error for the Court of Appeals to reverse the judgment of the District Court for alleged abuse of discretion in entertaining Waialua's suit for declaratory relief. See *Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227, 239-242 (reversing both courts below); *Currin* v. *Wallace*, 306 U. S. 1, 9; *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 272-274 (reversing both courts below); *Altvater* v. *Freeman*, 319 U. S. 359, 363-366 (reversing Court of Appeals); *Tunstall* v. *Brotherhood*, 323 U. S. 210, 212-214 (reversing both courts below); *Railway Mail Ass'n.* v. *Corsi*, 326 U. S. 88, 93; *Order of Railway Conductors* v. *Swan*, 329 U. S. 520; *United Public Workers* v. *Mitchell*, 330 U. S. 75, 92; *Hilton* v. *Sullivan*, 334 U. S. 323; *McGrath* v. *Kristensen*, 340 U. S. 162, 169-171; *Joint Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, 140-142 (reversing both courts below); *Ramspeck* v. *Federal Trial Examiners Conference*, 345 U. S. 128 (reversing both courts below); *Ford Motor Co.* v. *Huffman*, 345 U. S. 330 (reversing Court of Appeals). See also *Akron, Canton & Youngstown R. R. Co.* v. *Barnes et al.*, 215 F. (2d) 423, 426-427 (C. C. A. 7), *cert.* granted and judgment vacated (on account of mootness), 348 U. S. 893; 28 U. S. C. § 2201; Rule 57, Federal Rules of Civ. Proc. 28 U. S. C. A.; Notes of Advisory Committee. *Id.*

This Court has repeatedly approved application of declaratory judgment procedure to controversies concerning interpretation and application of the Fair Labor Standards Act. See *Tennessee Coal, Iron & R. Co.* v. *Muscoda Local*, 321 U. S. 590, 592; *Jewell Ridge Coal Corp.* v. *Local #6167*, 325 U. S. 161. To the same effect are repeated rulings by

the lower Federal courts. *E.g., Bowie* v. *Claiborne*, (D. Puerto Rico) 1 Labor Cases ¶ 18,443, *aff'd. sub. nom. Bowie* v. *Gonzalez*, 117 F. (2d) 11 (C. C. A. 1); *Sunshine Mining Co.* v. *Carver*, 34 F. Supp. 274 (D. Idaho); *Green Head Bit & Supply Co.* v. *Hendricks*, 49 F. Supp. 698 (W. D. Okla.).

The circumstances of the instant case render inapplicable the cases cited by the court below (R. 741, 745, 840-842), or recently decided by this Court, in which declaratory relief was denied because the suit was either moot, premature, or otherwise advisory in character. *E.g., Longshoremen's Union* v. *Boyd*, 347 U. S. 222; *Public Utilities Commission* v. *United Airlines*, 346 U. S. 402; *Public Service Commission* v. *Wycoff*, 344 U. S. 237.

The entire proceeding on remand manifested the most meticulous compliance by the parties and the District Court with every requirement indicated in the first opinion of the Court of Appeals.[13] That opinion, while criticizing the declaratory judgment suit in a number of particulars, did not direct its dismissal. Recognizing the discretion which rested in the District Court to entertain the action (R. 840-841), the Court of Appeals on that occasion remanded for further proceedings including, as one suggested alternative, "the entry of detailed findings as to each employee defendant, based upon an adequate record" (R. 842). Nowhere in its first opinion did the Court of Appeals declare or even imply that such compliance would eventuate in a second reversal upon the entirely new basis of alleged "col-

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[13] R. 826-840. Thus: (1) the judgment of the District Court gave a mandate as to each employee involved; (2) detailed and specific findings of fact were entered as to each such employee; (3) the action was limited in time to the period November 20, 1946 to and including September 14, 1947; (4) the class representation aspects of the action were eliminated; (5) the union and union official were dropped as parties defendant; (6) a single trial was had of both Waialua's suit for declaratory judgment and the employees' counterclaim under Section 16(b) of the Act; (7) 22 of the 42 employee defendants testified orally in the action.

lusion" advanced in the second opinion (discussed in Point II, *infra*).

In denying the petition for rehearing below, the Court of Appeals called attention to "considerations of expense in futile proceedings" (R. 747). From the outset of this complex litigation in 1947, Waialua has indeed been mindful of such considerations. Recognized grounds for declaratory relief include the avoidance of threatened multiple suits for damages, with which Waialua was here confronted.[14] Waialua is constrained to conclude, and respectfully submits, that the expense of futile proceedings must be attributed to the error of the Court of Appeals in departing so markedly from the usual course of judicial proceedings as to require the exercise of this Court's power of supervision.

Among the numerous instances in which this Court exercised such supervisory power (*supra*, p. 26), the *Altvater* case is especially appropriate. The trial court had dismissed the plaintiff's suit for an injunction against infringement, but adjudged the patent valid under a counterclaim for declaratory relief in that respect. The Court of Appeals reversed on the ground that the declaratory action was moot. This Court held that the claim for declaratory relief presented a justiciable controversy apart from the infringement suit, and reversed and remanded with direction that the Court of Appeals review on the merits the trial court's judgment in the declaratory action. This

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[14] See *Altvater* v. *Freeman*, 319 U. S. 359, 365; Reed, J., concurring, *Public Service Commission* v. *Wycoff*, *supra*, 344 U. S. at 250-251; *Akron, Canton & Youngstown R. R. Co.* v. *Barnes, et al.*, *supra*, 215 F. (2d) at 426; *Davis* v. *American Foundry Equipment Company*, 94 F. (2d) 441, 442 (C. C. A. 7); *New York Life Ins. Co.* v. *Roe*, 102 F. (2d) 28, 30 (C. C. A. 8); *Crosley Corp.* v. *Hazeltine Corp.*, 122 F. (2d) 925, 930 (C. C. A. 3), *cert. den.* 315 U. S. 813; *Continental Casualty Co.* v. *National Household Distributors, Inc.*, 32 F. Supp. 849, 850 (E. D. Wis.); *Inland Mutual Insurance Co.* v. *Eastern Motor Lines*, 119 F. Supp. 344, 349 (W. D. S. C.).

Court also rejected the contention that the cause be ordered returned to the trial court saying:

> "If the standards of good judicial administration be considered, we fail to see why petitioners should be put to two trials of the same issues before a review by the Circuit Court of Appeals may be had. Nor would it comport with sound judicial administration to uphold a denial of appellate review where the controversy between the parties still rages and where the appeal was dismissed because of a mistaken view of the law". 319 U. S. at 366, note 6.

The Court of Appeals recognized that each of the employees involved had a remedy at law by damage suit under Section 16(b) of the Act (R. 745); but the court overlooked that the counterclaim in the very record before it was based on precisely that right of action under Section 16(b), arising out of the same transaction or occurrence as the suit for declaratory relief. *Supra*, p. 9, note 5. When Waialua called this to the attention of the Court of Appeals upon petition for rehearing, the court proceeded to construe the counterclaim "as a petition also for declaratory relief" (R. 747), although the counterclaim contained no such prayer.[15]

In sum, the District Court did not abuse its discretion in entertaining Waialua's suit for declaratory relief, and in resolving the justiciable controversy presented by the parties and the record.

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[15] Since the District Court had jurisdiction over the counterclaim entirely independent of its jurisdiction over the declaratory judgment suit, the Court of Appeals also erred in failing to review on the merits the District Court's adjudication of the counterclaim, after reversing the money judgment awarded by the District Court. See *Altvater* v. *Freeman*, 319 U. S. 359, 363-364, 366; *Pioche-Mines Consol Inc.* v. *Fidelity-Phila. Trust Co.*, 206 F. (2d) 336 (C. C. A. 9); *Isenberg* v. *Biddle*, 125 F. (2d) 741, 743 (App. D. C.); *Lion Mfg. Corp.* v. *Chicago Flexible Shaft Co.*, 106 F. (2d) 930, 933 (C. C. A. 7); *Vidal* v. *South American Securities Co.*, 276 Fed. 855, 874 (C. C. A. 2); *U. S. Industrial Chemicals Inc.* v. *Carbide & Carbon Corp.*, 52 F. Supp. 164, 166 (S. D. N. Y.).

II.

THE COURT OF APPEALS ERRED IN ORDERING DISMISSAL OF WAIALUA'S DECLARATORY JUDGMENT SUIT ON THE GROUND THE PARTIES WERE IN "APPARENT COLLUSION".

A. Waialua's Suit Was Not Rendered Collusive Because the Parties Stipulated to Most of the Facts.

Where, as here, the parties have adverse interests in an actual controversy, "it is . . . a judicial act to give judgment" on the legal relationship which "the court finds to be established by stipulated facts". See *Pope* v. *United States*, 323 U. S. 1, 12 and cases there cited; *Tennessee Coal, Iron & R. Co.* v. *Muscoda Local*, 137 F. (2d) 176, 179-180, *aff'd* 321 U. S. 590; *Federal Trade Commission* v. *Pacific States Paper Trade Ass'n.*, 273 U. S. 52, 60-63. This Court has frequently given effect to stipulations or concessions of pertinent facts in litigation concerning the coverage and application of the Act. See *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 758 (conceded that field employees were engaged in production of goods for commerce); *Williams* v. *Jacksonville Terminal Co.*, 315 U. S. 386, 391 (stipulated that redcaps were employees and were engaged in commerce); *Kirschbaum* v. *Walling*, 316 U. S. 517, 519 (conceded that tenants of building involved were principally engaged in production of goods for commerce); *Rutherford Food Corp.* v. *McComb*, 331 U. S. 722, 725, 729 (stipulated that meat boners in a packing plant owned their own tools and were not subject to union authority). The policy favoring stipulation of undisputed facts is embodied in the Federal Rules of Civil Procedure (Rules 16 and 36, 28 U. S. C. A.); and this practice is especially appropriate in a declaratory judgment suit which "often involves only an issue of law on undisputed or relatively undisputed facts". See Notes of Advisory Committee, Rule 57, Fed. Rules Civ. Proc. 28 U. S. C. A. See also *Wickard* v. *Filburn*, 317 U. S. 111, 125 (stipulation summarizing economies of

wheat industry, as basis for exercise of constitutional power over interstate commerce).[16]

B. The Court of Appeals Wholly Misconceived the Nature of the Action When It Directed Dismissal and Stated that "the Entire Cause Was Tainted by Apparent Collusion Between the Parties in the Attempt to Obtain an Advisory Opinion Upon Constitutional Questions" (R. 747).

Waialua vigorously disagrees with the *dictum* of the Court of Appeals that employment relations in agriculture are beyond the constitutional power of Congress (R. 740, 742-743). In the proceedings below, counsel for both parties, as well as counsel for the Department of Labor (which appeared *amicus curiae*), separately and independently assumed in trial and argument that all the employees involved (other than those engaged in making dwelling repairs and maintaining related domestic facilities, discussed in Point VI, *infra*) are engaged in the production of goods for commerce. That assumption was made in good faith by the respective parties and was compelled by the applicable decisions of this Court. See *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 759. All parties rightly

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[16] The cases cited by the Court of Appeals are not relevant. *E.g.*, in *United States* v. *Johnson*, 319 U. S. 302, plaintiff had brought in a fictitious name a suit instituted at defendant's request. The plaintiff had not employed or even met the attorney of record who appeared in his behalf; had not read the complaint filed in his name; had no knowledge of the amount of the judgment sought until advised in the local press; and had filed no brief. In *Lord* v. *Veazie*, 8 How. 251, there was no adversary relationship between the parties. This Court said, however, that stipulations by adverse parties of facts known to be true, "far from being objects of censure, are always approved and encouraged, because they facilitate greatly the administration of justice". 8 How. at 255. In *Ward* v. *Alsup*, 100 Tenn. 619, 46 S. W. 573, also cited by the Court of Appeals, the state court indicated in *dictum* that the suit would be fictitious if its main object were to affect third persons rather than to redress the plaintiff's grievance.

recognized that the constitutional power of Congress under the commerce clause reached the production of agricultural commodities destined for interstate movement. See *Wickard* v. *Filburn*, 317 U. S. 111, 118; *Santa Cruz Fruit Packing Co.* v. *Labor Board*, 303 U. S. 453; *Mandeville Farms* v. *Sugar Co.*, 334 U. S. 219, 236-237. The parties' failure to raise constitutional questions which were entirely lacking in substance is a wholly unsound basis for the Court of Appeals' finding of "collusion". *Cf. Mazer* v. *Stein*, 347 U. S. 201, 206-207.

The actual controversy between the parties, as presented by the record, briefs, and oral argument, revolved around the construction of the Act rather than the constitutional power of Congress over agricultural employment. Contrary to the suggestion of the Court of Appeals, there was no agreement between the parties, by stipulation or otherwise, as to conclusions of law or constitutional power. The parties have been vigorous antagonists throughout the litigation, and neither Waialua nor the employees conceded any issue of fact or law which would have foreclosed any tenable argument supporting their respective positions. The fact that this proceeding is decisive of similar problems affecting all Hawaiian sugar plantations (and large segments of continental agriculture) simply contributes to the desirability and importance of declaratory relief as prayed by Waialua.

Waialua had contended below, and the Court of Appeals' opinion specifically agreed, that all the employment here involved is exempt from the Act in view of the broad agricultural exemption in Sections 3(f) and 13(a)(6). The Court of Appeals therefore did not find it necessary to consider Waialua's further contention that any employees not exempt under Section 13(a)(6) were exempt under the year-round exemption from overtime requirements for processing of sugar cane in Section 7(c). In any event Waialua's declaratory judgment suit was properly founded upon the appropriate interpretation of these exemptions under the

Act of Congress, rather than upon the erroneous constitutional argument adopted by the Court of Appeals as the basis for its erroneous conclusion that Waialua had committed an "error in approach" which justified dismissal of its suit for declaratory judgment.

Manifestly the Court of Appeals should have addressed itself solely to the issues of statutory construction, under the established doctrine that Federal courts will not pass upon constitutional questions unless unavoidable. *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U. S. 129, 136-137; *cf. Mazer* v. *Stein*, 347 U. S. 201, 206-207. By injecting a constitutional issue not necessary to the decision or presented by the parties or the record, the Court of Appeals demonstrated a fundamental hostility to declaratory judgment procedure concerning statutory construction. The arbitrary refusal of declaratory relief in appropriate cases is contrary to the intent of Congress, as well as the repeated decisions of this Court in similar circumstances.

III.

THE JUDGMENT OF THE COURT OF APPEALS SHOULD BE REVERSED.

The petitioners in No. 357 assumed that the Court of Appeals decided the issues of statutory construction presented in Waialua's declaratory judgment suit and the employees' counterclaim. Waialua's petition in No. 358 took the contrary view, since the Court of Appeals actually directed that Waialua's suit be dismissed and that the employees' counterclaim be "left undismissed" (R. 747). If the Court of Appeals had resolved the statutory issues "for all practical purposes", as stated in the Memorandum filed by the Secretary of Labor in support of the petition in No. 357, the order below should have directed the District Court to enter judgment *for* Waialua and *against* the employees. Waialua's efforts to clarify the order by petition for rehearing were unavailing (R. 746-747). The Court of Appeals construed the counterclaim "as a petition also for declaratory relief", and stated that the "entire cause",

including the counterclaim, was "tainted by apparent collusion" (R. 747).

This Court granted the petitions for certiorari in both No. 357 and No. 358. Under applicable precedents,[17] if this Court deems it appropriate to resolve the entire controversy upon the present record, findings and stipulated facts, Waialua has fully briefed its position hereinafter on all statutory issues which appear in the record and were passed upon by the District Court.

ARGUMENT IN NO. 357.

We have already discussed the jurisdictional and constitutional issues which are expressly or necessarily presented by the petition for certiorari in No. 357. We now turn to the issues on the merits of statutory construction, which are either presented in that petition or which appear in the record and were passed upon by the District Court.

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[17] *Cf. New York Telephone Co.* v. *Maltbie*, 291 U. S. 645; *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151, 176; *Manufacturers' Finance Co.* v. *McKey*, 294 U. S. 442, 453-454; *Fischer* v. *American United Life Ins. Co.*, 314 U. S. 549, 555-556; *United States* v. *Ballard*, 322 U. S. 78, 88; *Bates* v. *United States*, 323 U. S. 15, 17; *Tunstall* v. *Brotherhood*, 323 U. S. 210, 214; *United States* v. *Beach*, 324 U. S. 193, 196; *Aetna Casualty & Surety Co.* v. *Flowers*, 330 U. S. 464, 468; *Labor Board* v. *Donnelly Garment Co.*, 330 U. S. 219, 237-238; *Labor Board* v. *Pittsburgh S. S. Co.*, 337 U. S. 656, 661-662; *Walters* v. *St. Louis*, 347 U. S. 231, 233.

IV.

THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE EMPLOYEES WERE "EMPLOYED IN AGRICULTURE" WITHIN THE MEANING OF SECTION 3(f) AND THEREFORE WERE EXEMPT FROM THE OVERTIME PROVISIONS OF THE ACT AS PROVIDED BY SECTION 13(a)(6) WHEN THEY WERE ENGAGED IN—

(i) HAULING MATERIALS, SUPPLIES, EQUIPMENT, OR EMPLOYEES TO AND FROM THE VARIOUS FIELDS ON THE WAIALUA PLANTATION;

(ii) HAULING SUGAR CANE PRODUCED BY WAIALUA FROM THE FIELDS TO THE MILL;

(iii) GRINDING SUCH SUGAR CANE AT THE MILL INTO RAW SUGAR AND MOLASSES;

(iv) TEMPORARILY STORING, LOADING, AND SHIPPING SUCH RAW SUGAR AND MOLASSES;

(v) REPAIRING, MAINTAINING AND SERVICING (a) FIELD IMPLEMENTS, (b) HAULING EQUIPMENT AND FACILITIES, AND (c) THE MILL AND ITS EQUIPMENT; AND

(vi) SUCH OTHER INCIDENTAL OPERATIONS AS WERE NECESSARY AND INDISPENSABLE TO THE FOREGOING.

Waialua is engaged in a single enterprise—growing sugar cane and transforming the cane into a marketable product, namely raw sugar and molasses. All of the activities listed above are performed by its employees as a necessary and integral part of that enterprise (*e.g.*, R. 35-36, 94).

Functionally, the activities of Waialua listed above are similar to the activities conducted by large numbers of wheat farmers, cotton farmers, fruit and vegetable farmers, among many others, in the continental United States and are common everyday activities performed by many American farmers and farms. The farmer in each of these groups engages in extensive hauling, preparation of his product for market, and repairing and maintaining his equipment and supplies. Moreover, the activities of Waialua and the employees, from the growing of sugar cane to the processing thereof, are substantially the same as those conducted by other sugar plantations in Hawaii.[18]

The employees nevertheless argue that the operations of Waialua are so unique that the above activities do not

[18] Bulletin No. 926, U. S. Department of Labor, "*The Economy of Hawaii in 1947*", pp. 33-50. See also R. 32, 396.

come within the agriculture exemption in the Act. Thus, they stress (1) the large size of the operations in terms of product, acreage, and number of employees; (2) the almost complete mechanization of the operations and the elimination of hand labor and work animals; and (3) the "industrialization" of the operations, *i.e.*, departmental organization, specialization of labor, and use of scientific techniques and methods. Waialua submits, however, that none of these considerations is relevant in determining the application of the exemption. Rather, the language and legislative history of the exemption, as well as the controlling case law, all show that the work of the employees falls within the exemption.

A. The Language of the Agriculture Exemption Exempted the Work of the Employees Involved Here.

1. *Analysis of the Statutory Language.*

This Court has said that "employment in agriculture is probably the most far reaching" of the exemptions in the Act. *Addison* v. *Holly Hill Fruit Products*, 322 U. S. 607, 612.

The statutory definition of "agriculture" (Section 3(f)) is divided into two distinct branches. The first distinct branch—the primary meaning—is "farming in all its branches and among other things includes the cultivation and tillage of the soil, . . . the production, cultivation, growing, and harvesting of any agricultural . . . commodities . . ." See *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755 at 762. The second distinct branch of the statutory definition of "agriculture"—the broader meaning—includes "practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market". This part of the definition embraces "practices, *whether or not themselves farming practices*, which are performed either by a farmer or on a farm". *Id.*, 337 U. S.

at 763. [Emphasis supplied]. Under the language of the exemption, it will be noted, such practices are exempt, if they are *either incident to* or *in conjunction with*[19] the farming operations; they do not have to be both.

Under the carefully drafted statutory language, the exemption thus starts with the growing of the agricultural commodity, continues with its cultivation and harvesting, includes its preparation for market or delivery to storage, and ends only after the farmer has delivered it to market or for transportation to market.

2. *Waialua was a farmer and the employees all worked on Waialua's own plantation, i.e., its farm.*

The Court of Appeals correctly concluded that Waialua was a "farmer" within the sense used in Section 3(f) since it was conducting the farming operations enumerated in the statutory definition of producing, cultivating, growing and harvesting sugarcane (R. 732-733, 734). Likewise the Court of Appeals correctly concluded that the employees all worked on Waialua's own plantation *i.e.*, its farm (R. 732, 733-734), the place where such farming operations were conducted.[20]

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[19] The term "incident" is defined in Webster's New International Dictionary, Unabridged Version, 1951 ed., p. 1257, as meaning "appertaining to", "directly and immediately pert. to, or involved in, something else". "Conjunction" is defined as "association", "occurrence together". *Id.*, p. 565.

[20] In some minor and sporadic instances some of the employees did some work off the plantation but such work was nevertheless clearly within the agriculture exemption. For example, in some workweeks employee Vierra hauled crushed rock from off the plantation to the plantation to be used in making concrete irrigation flumes for use in Waialua's irrigation operations (R. 250, 251). That such work was clearly exempt, see Interpretative Bulletin No. 14 of the U. S. Dept. of Labor ¶ 10(f): "The truck drivers working for a farmer, who haul garbage and feed *to* the farm for feeding pigs, also perform practices that are exempt." [Emphasis supplied]. WHM 35:356.

The District Court confined the agriculture exemption to certain specified field activities, namely preparation of land for planting, planting, ratooning, cultivating, fertilizing, irrigating, and the harvesting operation only up to the point where cars loaded with cut cane were moved from the fields on portable track to the fixed line of Waialua's narrow gauge railroad. *Supra*, p. 15. Fundamentally, the District Court's approach was based upon its finding that Waialua was engaged in five separate businesses, namely those of "farmer", "carrier", "manufacturer", "shipper", and "operator of village communities"[21] (R. 786-787, 794-795, 796, 803).

The Court of Appeals rightly rejected this clearly erroneous finding (R. 732, note 16). Every "farmer" is a "carrier" or "shipper" in the sense that (a) he hauls his products from the fields to storage, to market, to a processor, or to a carrier for transportation to market, (b) he hauls from one part of the farm to another agricultural supplies and agricultural equipment, and (c) he sends his trucks to a nearby town and hauls back necessary farm supplies and equipment. Moreover, every farmer is a "manufacturer" to the extent to which he transforms the product he grows into marketable condition. Many fruit and vegetable farmers can or pack their own fruits or vegetables; many cotton farmers gin their own cotton; and many dairy farmers process their own milk into butter and cheese. All of this is done preparatory to marketing.

The District Court also took the position that the activities here in question, namely hauling, grinding and the miscellaneous activities referred to *supra*, p. 35, were not exempt because it found that they did not take place on areas allotted to the growing of sugar cane; for example, R. 795. But this finding was clearly erroneous. In confining the agriculture exemption to field activities, the District Court confused the term "farm" with the term

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[21] Waialua's activities with respect to its plantation villages are discussed in Point VI, *infra*.

"field".[22] The term "farm" has never been limited to those portions of a farm on which agricultural products actually grow. Thousands of farms throughout the United States have field roads, barns, silos, wells and many other buildings and improvements, on the sites of which agricultural products do not actually grow. The term "farm" has never been deemed to exclude the locations of such field

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[22] The word "farm" is defined in Webster's New International Dictionary, Unabridged Version, 1951 ed., p. 919 as: ". . . a piece of land held under lease for cultivation; hence, any tract of land (whether consisting of one or more parcels) devoted to agricultural purposes, generally under the management of a tenant or the owner; any parcel or group of parcels of land cultivated as a unit". Moreover, the Secretary of Agriculture has determined "That in the case of the Territory of Hawaii, a farm means all land which is farmed by a producer, or group of producers, as a single farming unit, with cropping practices, work stock, equipment, labor, and management substantially separate from that of any other such unit". *Determination of a Farm, etc., for the Territory of Hawaii*, made by the Secretary of Agriculture under the Sugar Act of 1937 (Code of Federal Regulations, Title 7, Ch. VIII, Pt. 802, § 802.30 (2 F. R. 2108)). This Determination applied during the period involved herein. Waialua's plantation meets these definitions, since the agreed facts show:

> "All the lands devoted to the growing of sugar cane are managed and operated by the Plantation as an integrated farming unit and single enterprise with identical cropping, cultivation and harvesting practices, and with the same labor and equipment. Employees work in the fields moving from one area to another depending upon the program of plowing, planting, irrigating, fertilizing, applying herbicides and insecticides, weeding and harvesting. The cane lands are in various stages of production or preparation. Some acreage is being plowed and furrowed for new planting, some is being 'ratooned' (a process hereinafter described), some acreage is in young growth, some in old growth nearing maturity and other acreage is being harvested." (R. 35).

roads, or of such barns, silos, wells and other buildings and improvements.

Moreover, the District Court's position overlooks the fact that the agriculture exemption includes all activities performed "by a farmer", whether or not performed "on a farm"; and as we have shown, all the activities here in question were performed by a farmer, namely Waialua.

Furthermore, this position of the District Court is inconsistent with the second branch of the definition of agriculture and with the intent of the definition as shown by its legislative history (*infra*, pp. 45-55) and with the controlling precedents (*infra*, pp. 55-61). In fact, if this position of the District Court were accepted, the result necessarily would be to leave little or no significance to the second branch of the definition. It would add nothing to the first branch, if both were limited to field operations.

3. *All the activities of the employees in issue were within the plain language of the agriculture exemption.*

As shown by the agreed facts (R. 35-36), *supra*, p. 39, note 22, all of the activities of the employees here involved were integrated and coordinated with and an indispensable part of Waialua's operations of producing, cultivating, growing, and harvesting sugar cane. See also R. 33, 52, 67, 94, 733-734, 754-755. Moreover, they were performed only upon or with respect to the cane which Waialua grew on its own farm (R. 59, 84). This becomes doubly clear when we consider such activities *seriatim:*

Hauling: This work consisted of (i) hauling, principally by truck over field roads (*e.g.*, R. 64-66, 235-239, 248-256), of tractors and other field implements, materials and supplies, such as fertilizer, insecticides and herbicides, and of employees to and from various fields on the plantation; (ii) hauling of sugar cane produced by Waialua from the fields to the mill over a narrow gauge railroad located exclusively on the plantation (R. 59-63, 205-206); and (iii) repairing, maintaining and servicing the equipment and facilities, *e.g.*,

field roads and railroad trackage, employed in such hauling (*e.g.*, R. 206-212, 220-223, 279-283).

All of these hauling activities were necessary incidents of Waialua's sugar cane farming. None of the activities referred to in the agriculture definition in the Act, including the production, cultivation, growing or harvesting of the agricultural commodity, *i.e.*, sugar cane, or the preparation of the sugar cane for market, could possibly be performed without such hauling activities.

That all such hauling activities are indeed exempt is also clear from the language of the second branch of the agriculture definition, which specifically includes "preparation for market, delivery to storage or to market or to carriers for transportation to market". This language clearly establishes that the agriculture exemption includes all operations performed by the farmer or on the farm, as an indispensable incident to or in conjunction with the farming operations, up to and including the farmer's disposal of his product. And if Congress intended the exemption to extend to the delivery of the product to market or to carriers as it expressly provided, obviously it intended that all operations which preceded such delivery should be exempt when performed by the farmer or on the farm as a necessary incident to or in conjunction with farming operations. Thus, if transportation required in the delivery of raw sugar to carriers for transportation to market was exempt (R. 317-318), it would be unreasonable to hold that hauling of cane to the mill (R. 205-206), which preceded even the preparation for market, was not exempt. For the same reason it would be equally unreasonable to exclude from the exemption the hauling of equipment, supplies and employees to or from the fields (*e.g.*, R. 235-239, 248-256) and the repairing, maintaining and servicing of hauling equipment (*e.g.*, R. 198-201, 206-212) necessary to the continued functioning of the field operations and of the operations involved in delivering the cane to the mill.

There is no rational basis for distinguishing between that part of the operation of hauling sugar cane which took

place on the portable tracks which the District Court held exempt (R. 790, 194), and that part which took place on the permanent tracks, which the District Court held non-exempt. Both were part of the gathering in of the sugar cane (R. 732).[23] The portable tracks were used in the fields instead of the permanent tracks only because permanent tracks cannot be laid on account of the interference which would otherwise result in planting and cultivating operations (R. 60). During the short periods when portable tracks were in use in the fields, they were an integral part of the plantation's railroad system over which cane cars moved directly from the fields to the mill (*Id.*).

The employees have argued, however, that the exemption does not apply to hauling by rail on a farm. But under the statutory language, it is irrelevant, as the Court of Appeals found (R. 834), whether the cane hauling is by truck, flume, railroad or water buffalo.

Preparation for market: This work consisted of grinding the sugar cane at the mill into raw sugar and molasses, and repairing, maintaining, and servicing the mill and its equipment. As already noted, Waialua ground at the mill only the cane grown by itself on the plantation (R. 84).

If the words "preparation for market" as used in the second branch of the agriculture definition are to be given any meaning with respect to sugar cane farming, they plainly embraced the mill operations in which the employees engaged (R. 213, 310-317, 216-220).[24] Sugar cane,

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[23] Hauling on either track comes within the term "harvesting" contained in the statutory definition. See Webster's New International Dictionary, Unabridged Version, 1951 ed., defining "harvesting" at p. 1142 as "to gather in a crop" and College Standard Dictionary, Funk & Wagnalls (1943), defining "harvesting" at p. 526 as "to gather and store a crop".

[24] The Court of Appeals concluded that the work of the employees in connection with the mill operations also comes within the term "harvesting", in view of the necessity of processing the cane into

because of its highly perishable nature and weight and bulkiness, never moves in interstate commerce nor does it have any economic use as such. Rather it must be ground within a few miles of where it is grown, before moving in interstate commerce (R. 33, 731). And Waialua always processed its sugar cane into raw sugar or molasses in order to market it (R. 31, 33), following the usual practice in Hawaii.[25] Clearly then, the mill operation was "preparation [of sugar cane] for market".[26] The statutory language likewise encompassed the necessary and incidental function of keeping the mill equipment in good repair(*e.g.*, R. 310-317, 212-220, 223-226; see also R. 94).

Repair, maintenance and service of field implements (e.g., R. 97-99, 101, 191-197, 231-235, 239-243, 273-276);

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raw sugar within a few hours after it is cut (R. 732, 733). In this connection, the Court rejected (R. 731) as clearly erroneous the District Court's finding by implication (R. 753) that sugar cane can be stored two or three days without spoiling.

[25] "In Hawaii the growing of cane and manufacturing of raw sugar are combined in a single plantation, based on a planned program to provide a continuous flow of cane into the mill. Under these conditions small-scale operations are inefficient. Where small-scale farming persists, in other sugar-producing areas, there is a sharp line of demarcation between the growing of sugar cane and its processing, the farmers selling to the processors." See *Bulletin No. 926*, U. S. Department of Labor, "*The Economy of Hawaii in 1947*", p. 33. See also *Marketing Sugar Cane in Louisiana* (U. S. Department of Agriculture, 1949) pp. 3-24. The situation in Puerto Rico is described at pp. 60-61, *infra*.

[26] Such mill operation is obviously distinguishable from the refining operations referred to by the employees in their petition for certiorari in No. 357 (pp. 3, 9). The refining operations are conducted on the mainland on a non-perishable product by a cooperative, none of whose employees is here involved. Waialua is a member of the cooperative, but none of its employees is employed by the cooperative or engaged in the cooperative's work of refining sugar (R. 729-730).

keeping of records at office, (R. 108-109, 319-320); storage of materials, supplies or equipment (R. 106-108, 318-319); laboratory work for control of all field and mill operations (R. 103-105, 285-288), etc.: All of these activities are indispensable incidents of Waialua's sugar cane farming. They are part of the integrated sugar cane producing and processing enterprise conducted by Waialua.

4. *Additional erroneous interpretations of the District Court.*

(i) The District Court relied upon the departmentalization of Waialua's plantation organization, under which the employees engaged in the activities in question were carried on the payroll and accounting records as attached to different departments than the field employees (R. 793, 794, 797, 802).[27] The question of whether particular employees of Waialua were engaged in practices incident to or in conjunction with Waialua's farming operations can be determined only by examining the activities of such employees in their relation to the actual operations of Waialua, and cannot be affected by such matters as departmentalization or accounting procedures.

(ii) The District Court found that the employees engaged in the mill operation of Waialua were not engaged in an operation which was a "subordinate" part of farming and therefore their work was not "incident" to Waialua's farming operations and did not fall within the

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[27] In this connection the District Court made the clearly erroneous and misleading findings that Waialua distinguishes on its records between harvesting and main line transportation, and separates field activities from transportation at the point where cane cars are placed on the main line railroad (R. 794). But Waialua also distinguishes on its records between harvesting and *field* transportation and on such records separates field activities from transportation at the point where cane cars are placed on *portable tracks in the fields* (R. 178).

agriculture exemption (R. 796). But this finding is clearly erroneous, because the record shows that in terms of effort as represented by hours of labor and in terms of expense as represented by operating charges, Waialua's mill operations were clearly subordinate to its cultivating, irrigation, harvesting, and other general field operations (R. 178). But even assuming that Waialua's mill operation was not so subordinate and therefore was not "incident" to its "farming" operations, the argument overlooks the fact that the statutory definition of "agriculture" not only embraces "practices . . . *incident to* . . . farming operations", but as an alternative and distinct category of exempt operations, it also embraces "practices . . . performed by a farmer or on a farm . . . *in conjunction with* . . . farming operations" [Emphasis supplied]. The phrase "in conjunction with" does not mean subordinate. The mill operation was clearly "in conjunction with" the field operations of Waialua and as such was within the statutory exemption.

B. The Legislative History of Sections 13(a)(6) and 3(f) Also Shows That the Work of the Employees in Question Was Exempt Thereunder.

The comprehensive character of the "agriculture" exemption is fully borne out by its legislative history.

1. *Senate proceedings.* S. 2475,[28] which ultimately became the Fair Labor Standards Act of 1938, was introduced in the Senate on May 24, 1937. As the bill was introduced, agricultural laborers were exempt (§ 2(7)), but there was no definition of the term "agricultural laborer".

The Senate Committee on Education and Labor, to which the bill was referred, rewrote the agricultural exemption. The Committee bill exempted "any person employed in

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[28] The bills in their various forms—as introduced, as reported, etc.—referred to in this discussion of the legislative history are collected in "Senate Bills, 75th Cong. 1937-38, Vol. 13, 2401-2550, J-50-2d Set" (Library of Congress).

agriculture" without limitation; and the Committee wrote into the bill its own comprehensive definition of "agriculture" as including

> ". . . farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, forestry, horticulture, market-gardening, and the cultivation and growing of fruits, vegetables, nuts, nursery products, ferns, flowers, bulbs, livestock, bees, and poultry, and further includes the definition contained in sub-division (g) of section 15 of the Agricultural Marketing Act, approved June 15, 1929, as amended, or any other agricultural or horticultural commodity, *and any practices ordinarily* performed by a farmer as an incident to such farming operations" [Emphasis supplied].

See S. 2475 as reported in the Senate July 6, 1937, § 2(7), Calendar No. 905, 75th Cong., 1st Sess., pp. 50-51. The Committee Report contained only a brief statement that the bill excluded—

> "persons engaged in agriculture and such processing of agricultural commodities as is *ordinarily* performed by farmers as an incident of farm operations" (*S. Rep. 884*, 75th Cong., 1st Sess., p. 6). [Emphasis supplied]

Senator Black, chairman of the Senate Committee in charge of the bill, in opening the Senate debate on the bill, stated that it—

> "*specifically excludes workers in agriculture of all kinds and of all types. There is contained in the measure, perhaps, the most comprehensive definition of agriculture which has been included in any one legislative proposal.*
>
> We have placed together in the bill definitions of agricultural work which have been fixed from time to time in other legislative enactments, and in addition to that we have drawn liberally from Mr. Webster's definition of agriculture." 81 Cong. Rec. 7648. [Emphasis supplied]

In debate, Senator Pope asked if "dairying" would include "the farmer who bottles his own milk and cream and sells it . . . even though he might do it in considerable quantity". Senator Black answered, "Unquestionably", and further, "I have no doubt that a dairy farmer who bottles his own milk is still a dairy farmer. The fact that he bottles it would not change his characteristics from that of a farmer." 81 Cong. Rec. 7656.

Senator Copeland read a telegram from the International Apple Association urging that the agricultural exemption be amended to include "preparing for market, in their raw or natural state within the area of production, fresh fruits and vegetables, including packing, packaging, storing, transporting, and marketing of said commodities" *Id.*, p. 7656. Senator Black commented that the Committee was not in favor of exempting the packing business as it related to many agricultural products. But he significantly added: *"The farmer or the apple grower has a perfect right, of course, to pack his own apples either alone or in cooperation with his farming neighbors . . ."* [Emphasis supplied]. *Id.*, p. 7657.[29]

Senator Overton then asked Senator Black whether if a farmer has a large cotton plantation and gins his own cotton, the ginning operation is exempt. Senator Black replied in the affirmative, that such cotton ginning would be a process in the agricultural handling of cotton and that the "bill does provide that *those things done with ref-*

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[29] Senator Copeland later questioned Senator Black on the packing by a farmer of his own apples, his placing them in a storage house, and his subsequent transportation of the apples to market. Senator Black stated that such operations would be exempt. He drew an analogy between such operations and those of a farmer raising watermelons who packs his fruit in crates and then takes them to town to sell them either to a broker or from house to house. All such operations, he stated, would be exempt. 81 Cong. Rec. 7658. See also similar statements by Senator Schwellenbach (*Id.*, p. 7659) Appendix B, p. 90, *infra*.

erence to commodities produced on the farm by the farmer on the farm are not included in the possible application of the Act" [Emphasis supplied.]. *Id.*, p. 7657.

Later in the debates, Senator Black, commenting upon a suggestion of Senator Schwellenbach that the line of distinction be made at the point of agricultural operation and that "when it becomes a processing operation, a canning operation, it ceases to be an agricultural operation," stated as follows: "Going into another phase of farming, let us take the man who raises hogs. *A great many farmers who raise hogs kill their hogs on their own farms . . . They prepare the hogs for market on their own farms, and then send out the product. As the bill is framed, there would be no possible manner in which their employees could be included under the provisions of the bill, because that would clearly be farming; . . .*" [Emphasis supplied]. *Id.*, p. 7659.

The debate specifically addressed itself to the processing of sugar cane. Senator Overton inquired whether a sugar plantation with a mill at which it processed its own cane into sugar would be exempt. Senator Black replied that it would depend upon whether such processing was *ordinarily* performed by a farmer upon his crop. *Id.*, pp. 7657-7658. See Appendix B, pp. 90-92, *infra*. Since the word "*ordinarily*" was later stricken from the exemption before the bill was enacted, it is obvious that the grinding by a farmer of his own cane was intended to be within the exemption whether or not "ordinarily" a farmer does such grinding. In any event, cane grinding is "ordinarily" performed on its own plantation by Waialua itself on the cane that it grows, following the usual practice in Hawaii. *Supra*, p. 43, note 25. Moreover, the colloquy between Senators Black and Overton indicates that in Louisiana also, it is the practice of some farmers to process their own cane into sugar. Appendix B, p. 92, *infra*. See also *Marketing Sugar Cane in Louisiana* (U. S. Department of Agriculture, 1949) pp. 11, 23 (over 40% of cane crop in Louisiana is grown by growers who operate their own cane grinding mills).

In the debate Senator Black also said that whether a sugar plantation's mill operation would be exempt would depend upon whether such operation was a "necessary incident" to that type of cane farming. 81 Cong. Rec. 7658. But here again the exemption was subsequently broadened to exempt "practices . . . performed by a farmer . . . *in conjunction with*" farming operations, as well as "practices . . . performed by a farmer . . . *incident to*" farming operations.

The legislative history also left no doubt as to exemption of operations and facilities functionally necessary to the growing and processing of sugar cane and to the shipment of raw sugar so processed, such as the hauling of cane from the fields to the processing plant and the repair of field, hauling, and processing equipment. On July 30, 1937, Senator McGill introduced an amendment (*id.*, p. 7888) to provide that the agricultural exemption should apply not only to practices ordinarily performed *by a farmer* as an incident to his farming operations, but also to practices performed *on a farm* as an incident to such farming operations. His amendment further provided that following the word "any practices ordinarily performed by a farmer or on a farm as an incident to such farming operations," there be added the words "including delivery to market". Senator McGill stated that the purpose of his amendment was to exempt all kinds of work done on a farm so long as it was incidental to agricultural purposes and was merely preparatory to the marketing of the field crop; and that the amendment would also exempt all kinds of labor performed in connection with making delivery to market of agricultural products. *Id.*, pp. 7888, 7927, 7928. The amendment was adopted. *Id.*, p. 7888.[30]

The bill passed by the Senate on July 31, 1937 defined "agriculture" in relevant part as including

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[30] The discussion on the McGill amendment and also on a related amendment introduced and then withdrawn by Senator McAdoo appears in Appendix B, pp. 92-95, *infra*.

". . . any practices *ordinarily performed* by a farmer or *on a farm* as an incident to such farming operations, *including delivery to market*" [Emphasis supplied].

2. *House proceedings.* The bill was thereupon referred to the House Committee on Labor. As reported by that Committee on August 6, 1937, "agriculture", insofar as relevant here, was defined as including

". . . *any practices performed by a farmer or on a farm* as an incident to such farming operations, *including delivery to market* . . ." [Emphasis supplied]. § 2(7), S. 2475 as reported, Union Calendar No. 535, 75th Cong., 1st Sess., pp. 4-5.

The bill as reported by the House Committee thus struck "ordinarily" from the definition of agriculture, so that the definition included *any practices* performed by a farmer or on a farm as an incident to farming operations, without qualifications. The Committee report made specific reference to the fact that it had struck the word "ordinarily", thus showing that such action was not inadvertent. H. Rep. 1452, 75th Cong., 1st Sess., p. 11. And the definition as ultimately enacted did not contain the word "ordinarily" or any similar limitation.

The Rules Committee of the House refused to grant a rule, but on December 13, 1937, that Committee was discharged from further consideration of the bill by petition of the House membership. However, on December 17, 1937, the bill was recommitted to the Labor Committee. At that time, insofar as relevant, "agriculture" was still defined as when the bill was reported on August 6, 1937.

On April 21, 1938, another draft of S. 2475 was reported to the House. As reported the definition of "agriculture" was again broadened, and, insofar as relevant, read as follows:

" 'Agriculture' includes . . . *any practices performed by a farmer or on a farm as an incident to such farming operations, including preparation for market, delivery to storage or to market or to carriers for trans-*

portation to market" [Emphasis supplied]. § 3(f), S. 2475, 75th Cong. 3d Sess., reported with amendment, Union Calendar No. 804, p. 50; *H. Rep. 2182*, 75th Cong. 3d Sess., pp. 2, 8.

This definition added the phrases: "preparation for market,[31] delivery to storage . . . or to carriers for transportation to market". The bill passed the House on May 24, 1938 in this form. 83 Cong. Rec. 7397, 7450.

3. *Conference Report and debates thereon.* The Conference Report not only retained every single amendment that had broadened the definition of "agriculture", but it made that definition still more inclusive by exempting all practices performed by a farmer or on a farm "*in conjunction with such farming operations*". 83 Cong. Rec. 9246-9247. Thus Congress was even unwilling to restrict the definition to practices that were *incident* to farming operations, but made explicit its intent that the exemption should apply as well to practices *in conjunction with farming operations*.

In Senate debate on the Conference report, Senator Elbert D. Thomas, who had succeeded Senator Black as chairman of the Senate Committee on Education and Labor, and was chairman of the Senate conferees, stated that the agricultural exemption was purposely all-inclusive. 83 Cong. Rec. 9162-9163. See Appendix B, p. 96, *infra*.

4. *Conclusion on legislative history.* Congress started with a comprehensive exemption of agricultural labor; and at every stage of its consideration by one or the other of the houses of Congress, as the bill worked its way through to passage, the definition was made more and more all-inclusive. Without the broad definition of "agriculture"

[31] Unlike similar language in Section 13(a)(10), this is not limited by the requirement that the preparation for market of the agricultural commodities be of the commodities in their raw or natural state. Hence, any preparation for market by the farmer or on a farm is exempt even if in such preparation the raw or natural state of the commodities is changed.

which was written into the bill, it is a reasonable conclusion from the legislative history that the bill would not have been enacted into law (83 Cong. Rec. 7393, 9257).

No distinction was drawn by Congress between "large" or "small" farms or between "hand labor" or "mechanized" farms. *Cf. Labor Board* v. *Campbell*, 159 F. (2d) 184, 187 (C. C. A. 5). Waialua's field operations are no less mechanized than its processing or hauling operations (R. 57, 115, 754-755); and throughout American agriculture, growing operations are commonly integrated with processing operations. *Supra*, p. 35.

Congress legislated with full appreciation of the accelerating pace of technology in American agriculture. The growth in size of farms is shown by the following data for the continental United States:[32]

Year	Total Number of farms	Farms with 1000 acres or more	
		Number of such farms	Percent of all farm land in such farms
1920	6,448,343	67,405	23.1%
1935	6,812,350	88,662	29.4%
1950	5,382,162	121,362	42.6%

Furthermore, farms or plantations the size of Waialua's are not rare in the United States and its territories and possessions. The last available census disclosed 7,152 farms with 10,000 acres or more. 2 *U. S. Census of Agriculture* (1950) c. 10, p. 774, Table 4.

Much of the trend toward larger farms, as shown by the distribution of farms by size for the various censuses, "has been due to the consolidation of farms into larger operating units made possible by increased mechanization." 2 *U. S. Census of Agriculture* (1950) c. 10, p. 772; see also c. 3, pp. 198-204. The index of farm labor productivity has increased from 81 in 1920 and 96 in 1935 to 176 in 1953. See *Statistical Abstract of the United States 1954*, p. 668. Farmers' total expenditures for motor vehicles, machinery

[32] *Statistical Abstract of the United States 1954* (Bureau of Census), p. 642.

and equipment, have increased from $532 million in 1935 to $3.3 billion in 1952. The value of farm implements and machinery on American farms has increased from $2.1 billion in 1935 to $16.6 billion in 1953. *Id.*, p. 656. On the total balance sheet of American agriculture, the relative value of such mechanized equipment in proportion to farm realty has doubled since 1940. *Id.*, p. 634.[33]

Hawaiian agriculture was developed around the larger-type farm when the Act was passed. Hawaiian farms with 500 acres or more totalled 2,398,145 acres out of 2,485,648 acres in all Hawaiian farms in 1940. *Id.*, p. 944. In 1938, the average Hawaiian sugarcane acreage per farm was 4,413 acres, contrasted with an average of 1,001 acres in Florida, 28.3 acres in Louisiana and 31.7 acres in Puerto Rico. See *Agricultural, Manufacturing and Income Statistics for the Domestic Sugar Areas* (U. S. Department of Agriculture 1954) pp. 137, 72, 84, 106, 121.

Moreover, Congress has repeatedly declined to deny exemption to so-called "mechanized" or "industrialized" agriculture, notwithstanding arguments presented on behalf of Hawaiian plantation employees by the union representing the employees (R. 119, 120). *Hearings on Fair Labor Standards Act Amendments of 1949*, Senate Committee on Labor and Public Welfare, 81st Cong., 1st Sess., pp. 972-977, 979-981; *Hearing on S. 2386* (among other bills), Committee on Labor and Public Welfare, 80th Cong., 2d Sess., pp. 317-334; *Hearings on S. 1349*, Committee on Education and Labor, 79th Cong., 1st Sess., pp. 1048-1070. Indeed mechanization is recognized as the key to sound competition and improved labor conditions in the sugar cane

[33] American farmers expend $745 million per year for repairing farm machinery and tractors. See *Statistical Abstract, supra*, p. 656 (data for 1949; about 50% of farmers reporting). This total includes expenditures for both labor and parts (excluding motor truck and automobile repairs) but does not include the wage cost of repair work by regular farmhands.

industry. See *The Marketing of Sugar Cane in Puerto Rico* (U. S. Department of Agriculture, 1950) pp. 42-43.

The Court of Appeals accordingly rightly rejected (R. 738 note 28, 834) the District Court's position (R. 792, 796) that exemption should be denied employees engaged in the activities here involved because of the size, mechanization and "industrialization" of such activities. When Congress wanted to make an exemption depend on size, as it did in some instances under the Act,[34] Congress used specific and appropriate language. *Cf. Addison* v. *Holly Hill Fruit Products*, 322 U. S. 607, 614; *Lovvorn* v. *Miller*, 215 F. (2d) 601 (C. C. A. 5).

C. Related Exemptions for Agricultural Processors Emphasize the Far-Reaching Character of the Agriculture Exemption.

The determination of Congress to exempt all activities conducted by the farmer as an incident to or in conjunction with his farming operations is underscored by the widespread exemptions which were also granted to non-farmer processors of agricultural commodities in Sections 7(c) and 13(a)(10). The legislative history shows that those exemptions were granted in order to avoid imposing additional costs upon the farmer. See in particular 83 Cong. Rec. 7325, 7326, 7401, 7402, 7407-7408; and see also 81 Cong. Rec. 7648-7673, 7876-7888, 7927-7929, 7947-7949, 7957, and 83 Cong. Rec. 7419, 9162-9163, 9250, 9252, 9254. In fact, as the Congressional debates show, such exemptions were an integral part of the same general exemptive scheme for agriculture. *Addison* v. *Holly Hill Fruit Products*, 322 U. S. 607, 612-613.

If Congress exempted the processing of agricultural

[34] See for example, Sec. 13(a)(8)—exemption for newspapers having a circulation of less than four thousand; Sec. 13(a)(11)—exemption for switchboard operators of telephone exchanges having 750 or fewer stations; Sec. 13(a)(15)—exemption for employees of employer engaged in forestry or lumbering operations if number of such employees does not exceed twelve.

commodities by non-farmers to spare the farmer additional costs, it manifestly intended the comprehensive language of Section 3(f) to exempt operations by farmers themselves, where additional costs would be even more certain.

D. The Decided Cases Also Show That the Work of the Employees in Question Was Exempt Under the Agriculture Exemption.

The foregoing analysis of the language and legislative history of the agriculture exemption is fully supported by this Court's decision in *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755. That case held that the employees of a farmers' mutual irrigation company were not within the agriculture exemption. The irrigation company owned several reservoirs and a system of canals which were operated and maintained by its employees. The company's sole activity was the collection, storage and distribution of water for irrigation purposes to its own stockholders, all of whom were farmers. However, the irrigation company was not a farmer because it did not grow anything and none of its activities was performed on a farm.

This Court noted that "fortunately . . . the . . . Act provides a carefully considered definition" of agriculture. 337 U. S. at 762. The opinion then referred to the two distinct branches of the definition of "agriculture". *Supra*, p. 36. The opinion concluded that the activities of the employees of the company did not come under the first branch of the agriculture definition—the primary meaning of farming in all its branches—because the company "owns no farms and raises no crops" (*id.*, p. 763) and "is not engaged in cultivating or tilling the soil or in growing any agricultural commodity" (*id.*, p. 764). The Court then said concerning the company's irrigation work (337 U. S. at 766):

> ". . . coming to the second branch of the definition of agriculture [the broader meaning] . . . it does constitute a practice performed as an incident to or in conjunction with farming. If the Act exempted all such practices, the company would be exempt. But the

> exemption is limited. Such practices are exempt only if they are performed by a farmer or on a farm."

The Court added (*id.*, p. 767):

> "In the face of this careful use of language, we are required to limit the exemption as Congress intended it should be limited, to practices performed by a farmer or on a farm. In the present case it is clear that the work of the company's employees is done neither on a farm or by farmers".

In the instant case, however, Waialua does raise crops, does cultivate and till the soil, and does own a farm, and consequently the employees, when performing these activities, clearly come within the first branch of the agriculture definition. And the hauling, processing and other activities of Waialua, referred to *supra*, pp. 40-44, do constitute "practices . . . performed by a farmer . . . on a farm as an incident to or in conjunction with" the cultivating, tilling, growing, etc., operations performed by Waialua, and therefore come within the second branch of the agriculture definition.

Significantly, note 15 to this Court's decision (*id.*, p. 766) clearly states that the processing, on a farm, of farm commodities is incidental to or in conjunction with the farming operation by which the commodities are produced. The language is as follows:

> "[15] Although not relevant here, there is the additional requirement that the practices be incidental to 'such' farming. *Thus, processing on a farm of commodities produced by other farmers is incidental to or in conjunction with the farming operation of the other farmers* and not incidental to or in conjunction with the farming operation of the farmer on whose premises the processing is done. Such processing is, therefore, not within the definition of agriculture. *Bowie v. Gonzales*, 117 F. 2d 11". [Emphasis supplied].

It necessarily follows that the processing, on a farm, of commodities produced by the same farmer on the same

farm is incidental to or in conjunction with the farming operation of that same farmer. Moreover, the citation of *Bowie* v. *Gonzalez* indicates that the processing which this Court had most definitely in mind is the processing of sugar cane into raw sugar. And the rule applicable to processing applies equally to the other activities of Waialua here involved.[35]

The employees argue, however, that the reasoning in the *Farmers Irrigation* opinion (337 U. S. at pp. 760-762) renders the exemption inapplicable to many of Waialua's activities, which the employees assert are separately organized as independent productive activities and are no longer a part of the agricultural function. We submit that the employees have misconstrued this Court's meaning, which was simply that an activity, which would otherwise be exempt as a practice performed by a farmer, would not be exempt if performed by a separate entity or business organization. Noting that the employees of Farmers Irrigation Company were not the employees of the farmers, but were hired, fired, controlled and directed by the separate irrigation company, this Court concluded:

> "The controlling fact is that the company has been set up by the farmers as an independent entity to operate an integrated, unitary water supply system. The function of supplying water has thus been divorced by the farmers from the farming operation and set up as a separate and self-contained activity in which the farmers are forbidden, by the company's by-laws, to interfere. Those employed in that activity are employed by the company, not by the farmers who own the company." (337 U. S. at p. 768)

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[35] See also the following lower court decisions, which have applied the agriculture exemption to employees engaged in activities other than cultivation of the soil, and notwithstanding the mechanized or industrialized character of the operations involved: *Damutz* v. *Pinchbeck*, 66 F. Supp. 667 (D. Conn. 1946), 158 F. (2d) 882 (C. C. A. 2) (fireman in greenhouse, notwithstanding that the

The employees also rely on decisions of the Court of Appeals for the First Circuit relating to sugar cane operations in Puerto Rico—*Bowie* v. *Gonzalez*, 117 F. (2d) 11 and 123 F. (2d) 387; *Calaf* v. *Gonzalez*, 127 F. (2d) 934, and *Vives* v. *Serralles*, 145 F. (2d) 552.

The employees involved in the *Bowie* and *Calaf* cases were engaged in transporting and processing sugar cane which independent growers grew on their farms as well as sugar cane which their employer grew on his farms. The transportation and processing by such employees of the sugar cane of the independent growers was not incidental to or in conjunction with the farming operations of their employer and therefore did not come within the second branch of the agriculture definition. *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 766, n. 15. It is true that the decisions in these cases, 117 F. (2d) 11, 18 and 127 F. (2d) 934, 936-938, contain language indicating that in the opinion of the court the transportation and processing by employees of sugar cane grown by their employer would not come within the agriculture exemption. However such language was not necessary to the decisions. Furthermore the Court of Appeals for the First Circuit has subsequently indicated that these decisions stand for the proposition that the employees who work on the products of more than one farm do not come within the agriculture exemption. *Puerto Rico Tobacco Marketing Coop. Ass'n.* v. *McComb*, 181 F. (2d) 697, 701. The same explanation of the *Bowie* and *Calaf* decisions was given by the Court of Appeals below (R. 836; see also R. 737-738, note 26).

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growing of horticultural products is highly mechanized"; *Miller Hatcheries* v. *Boyer*, 131 F. (2d) 283 (C. C. A. 8)—(employees in a commercial chick hatchery located in a city, notwithstanding that the hatching of baby chicks by a commercial hatchery is an "industrialized" activity); and *Bruno* v. *Hills Brothers Co.*, 7 Labor Cases ¶ 61,793 (D. Puerto Rico 1943)—(employees engaged in canning and packing grapefruit and curing of citron raised by the employer on its own farms).

Vives v. *Serralles*, *supra*, dealt with the application of the agriculture exemption to employees of an employer who grew sugar cane on several separate farms. On one of the farms the employer operated a mill where the sugar cane was processed. The employer also owned and operated a railroad which was used in the transportation of sugar cane from the outlying farms to the mill. The railroad was not used to transport sugar cane grown on the farm where the mill was located. The case involved two groups of employees: (1) employees on the outlying farms who transported the sugar cane, after it was cut, to concentration points where railroad sidings were maintained; (2) employees on the farm where the mill was located, who transported sugar cane, after it was cut, to the mill. The transportation above referred to was in railroad cars pulled by oxen over portable tracks, in ox-carts, or in steel cars pulled by tractors. The court held that both groups of employees were within the agriculture exemption. The court pointed out that the situs of the activities of both groups of employees was on the farm and that the transportation operations were really part of harvesting. The relevance of the holding to the instant case concerns the second group of employees, who worked on the farm where the mill was located and who transported the sugar cane, after it was cut, to the mill on that farm. Their activities were comparable to the activities of the sugar cane hauling employees of Waialua.

From the foregoing it appears that the proper interpretation of the decisions of the Court of Appeals for the First Circuit is that they hold that sugar cane hauling and processing employees are within the agriculture exemption when they are hauling or processing sugar cane grown by their employer, but that such employees are not within the exemption when they are hauling or processing sugar cane grown by others than their employer. On this interpretation, there is no conflict between the Court of Appeals for the First Circuit and the Court of Appeals for the Ninth Circuit.

In any event, the First Circuit cases are not in point

because of the clear differences between sugar production in Puerto Rico and in Hawaii. Under the Puerto Rico system, the sugar mill, or "centrale", is owned by individuals, a partnership or a corporation, and grinds sugar cane grown on several separate farms which are (1) farms owned and operated by the centrale, and (2) farms owned and operated by independent growers, known as colonos, who are too small to afford their own mill. The mill may or may not be located on one of the farms whose cane it processes. The centrale also operates a railroad transportation system which hauls to the mill both the sugar cane grown by the centrale on all its farms and also the sugar cane grown by the colonos on their farms. The centrale operates its mill and transportation system as a single enterprise with supervision and employees separate from the farms which it operates. Each of the farms in turn has its separate supervision and employees. Usually, each colono has his own portable tracks on his farm, on which he hauls cane to a "concentration point" at the edge of his farm, where his cane is unloaded and delivered to the centrale. The centrale then reloads the cane on railroad cars on its main line and hauls it to the mill. Where the cane comes from the centrale's own farm or farms, the same system is followed except that, of course, the centrale itself through personnel working on the farm or farms performs all portable track operations.[36]

[36] These facts as to the centrale system are gathered from the District Court's decision in *Bowie* v. *Claiborne* (D. Puerto Rico 1939) 4 Labor Cases ¶ 18,443 and the First Circuit's decisions in *Bowie* v. *Gonzalez*, 117 F. (2d) 11 and *Calo* v. *Gonzalez*, 127 F. (2d) 934. For complete details see *The Marketing of Sugar Cane in Puerto Rico* (U. S. Department of Agriculture 1950) pp. 10-21. In the period covered by the instant litigation (1946-1947), 13,080 "farms" in Puerto Rico raised sugar cane, on an average growing area of 27.9 acres per farm. In the same time period, there were only 34 such farms in Hawaii (R. 32), with an average cane growing area of 6,224 acres per farm. See *Agricultural, Manufacturing and Income Statistics for the Domestic Sugar Areas* (U. S. Department of Agriculture 1954) pp. 121, 137.

The factual situation in Puerto Rico is thus distinguishable from the instant case in the following important respects: (i) In Puerto Rico the main line transportation facilities and mill involved are not incident to or integrated with any single farming operation by one owner-farmer. *Rather they serve many farmers and many farms.* Here, however, Waialua hauls and grinds only its own cane (R. 59, 84) and all such cane is grown by the one farm. (ii) In Puerto Rico the railroad transportation system is not located on any single farm as it is in the instant case (R. 59, 721, 722). (iii) In Puerto Rico the cane, after being cut on a farm, is hauled to a concentration point at the edge of the farm where it is unloaded and delivered to the transportation system of the centrale. The centrale then reloads the cane on railroad cars and hauls it to the mill. Here, however, there is no concentration point at which cane is collected and unloaded. The District Court's findings to the contrary (R. 758, 790, 795) are clearly erroneous, since the agreed facts show that cane cut in the fields is loaded into rail cars and moves in one continuous operation over portable tracks and permanent tracks directly to the mill (R. 60, 61, 62). There is no common pile or piles of cane in any field and no cane is ever piled at the edge of the field.

E. The Administrative Interpretations of the United States Department of Labor Also Support the Exemption of the Employees Here Involved Under the Agriculture Exemption.

In 1939, shortly after the enactment of the Act, the Department issued Interpretative Bulletin No. 14 (WHM 55:351 *et seq.*) in which it announced various interpretations of Sections 13(a)(6) and 3(f) and also of Section 7(c) and Section 13(a)(10). The interpretations in Interpretative Bulletin No. 14 represented the "contemporaneous construction of [the] statute by the men charged with the responsibility of setting its machinery in motion", and as such are entitled to great weight. *United States* v.

American Trucking Associations, Inc., 310 U. S. 534, 549.

Section 10(b) of Interpretative Bulletin No. 14 set forth the interpretations with regard to the scope of the term "preparation for market", as used in the second branch of the agriculture definition. The term was defined as including various operations performed by farmers to make ready their products for market, such as packing and canning fruits and vegetables, packing and canning dairy products, stemming tobacco, ginning cotton and also "*manufacturing raw sugar*" *and molasses from sugar cane.* WHM 35:355.

The interpretation relating to the manufacture of raw sugar and molasses from sugar cane was withdrawn after the decision of the Court of Appeals for the First Circuit in *Bowie* v. *Gonzalez*, 117 F. (2d) 11. WHM 35:355, Editor's Note. The withdrawal of the interpretation is not persuasive because it did not represent "contemporaneous construction" and because it was based on an erroneous interpretation of the decision in the *Bowie* case. *Farmers Irrigation Co.* v. *McComb*, 337 U. S. 755, 766, note 15. Furthermore, none of the other interpretations relating to the preparation for market by a farmer of other products, including canning and packing fresh fruits and vegetables, has ever been withdrawn, and apparently they still represent the position of the Secretary of Labor. There appears to be no possible reason for excluding from the agriculture exemption the processing by a farmer of sugar cane into raw sugar and molasses, when the packing and canning by a farmer of fruits and vegetables are exempt.

Section 10(f) of Interpretative Bulletin No. 14 dealt with transportation and "other practices" performed by a farmer and expressly stated:

> "If a company has sugar cane fields and also a mill, the transportation of its own sugar cane to the mill seems an incidental practice which is included in this term." WHM 35:356.

Such position has never been publicly changed by a republication of the bulletin or by a press release or by any

other means bringing the change to the attention of employers, employees and the public generally. But in the instant case, the Department has asserted that it no longer agrees with the position stated in its own Interpretative Bulletin. Such modified position of the Department is not persuasive, for the reasons already stated.

The various pertinent administrative interpretations of the Department relating to the agriculture exemption are set forth in Appendix "C", pp. 97-101, *infra*.

F. The Enforcement Policies of the United States Department of Labor Likewise Support the Exemption of the Employees Here Involved Under the Agriculture Exemption.

Almost since the enactment of the Act in 1938, a Federal Wage and Hour Office has been maintained in Hawaii, manned with personnel engaged in the enforcement of the Act.[37] This office made frequent inspections of Hawaiian sugar plantations over the years to check on compliance with the Act. At no time have the Secretary or Administrator[38] sought to enforce the overtime provisions of the

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[37] See Annual Reports to Congress of the Wage and Hour and Public Contracts Divisions: 1944, Table III, p. 36; 1948, Table D, p. 161; 1951, Appendix Table F, p. 57.

[38] Prior to May 24, 1950, the administration of the Act was in the hands of the Administrator of the Wage and Hour and Public Contracts Divisions. But effective on that date, the administration of the Act was transferred to the Secretary of Labor by virtue of Reorganization Plan No. 6 of 1950 (15 F. R. 3174), 64 Stat. 1263, 5 U. S. C. 133z-15. The Secretary however, has delegated back to the Administrator almost all of his functions in the administration of the Act. 15 Fed. Reg. 3290. Section 11(a) of the Act gives to the Administrator extensive powers of administration including full investigatory powers and including the right to bring injunction suits to restrain violations of the Act. The thoroughness with which the Administrator has exercised his powers of administration is attested by the many injunction actions which he has brought. See, for example, the following Annual Reports to Congress of the Wage and Hour and Public Contracts Divisions: 1948, p. 37; 1949, pp. 14-15.

Act with respect to employees of Waialua or any other sugar plantation in Hawaii when engaged in the activities here in question. To the contrary, in administering the Act, the Wage-Hour officials have always treated such employees as exempt.

It is true that in 1941, following the decision in *Bowie* v. *Gonzalez*, 117 F. (2d) 11 (C. C. A. 1), *supra*, p. 62, the Department of Labor changed its previous position and announced that the agriculture exemption does not apply to sugar mill employees, even though the only cane they grind is that grown by the sugar mill owner in his own fields. Significantly, however, although 13 years have elapsed since such alleged change of position, and the present case has been in the courts for more than 7 years, the Department has not yet sought to enforce the Act with respect to employees of Waialua or of any other sugar plantation in Hawaii engaged in the activities involved here, but has continued to treat such employees as exempt.

V.

THE EMPLOYEES WERE ALSO EXEMPT FROM THE OVERTIME PROVISIONS OF THE ACT UNDER SECTION 7(c) WHEN THEY WERE ENGAGED IN—

(i) GRINDING SUGAR CANE AT THE MILL INTO RAW SUGAR AND MOLASSES, AND REPAIRING, MAINTAINING, AND SERVICING THE MILL AND ITS EQUIPMENT;

(ii) TEMPORARILY STORING, LOADING, AND SHIPPING SUCH RAW SUGAR AND MOLASSES;

(iii) HAULING SUGAR CANE PRODUCED BY WAIALUA FROM THE FIELDS TO THE MILL AND REPAIRING, MAINTAINING, AND SERVICING EQUIPMENT AND FACILITIES USED IN SUCH HAULING; AND

(iv) SUCH OTHER INCIDENTAL OPERATIONS AS WERE NECESSARY AND INDISPENSABLE TO THE FOREGOING.

The Court of Appeals did not deem it necessary to consider the Section 7(c) exemption, in view of its position that all the employees were exempt under Section 13(a)(6) (R. 746, note 45). That, of course, is also the position of Waialua. But if this Court concludes otherwise, then we

submit that employees not found exempt under Section 13(a)(6) were necessarily exempt under Section 7(c).

A. The Employees Engaged in the Activities Above Listed Were Employed in the Place of Employment Where Waialua Was Engaged in Processing Sugar Cane Into Raw Sugar and Molasses and Were Performing Activities Necessary and Indispensable to Such Processing Operation.

While Section 7(c) was not written into the Act by Congress for the purpose of exempting the farmer as such, nevertheless its language applies to a farmer who processes his own crops as much as to a processor who processes only the crops grown by others.[39] The language, insofar as relevant, exempts without time limit, all employees in "any place of employment" where their employer is "engaged . . . in the processing of . . . sugar cane . . . into sugar (but not refined sugar) or into syrup". Thus, to fall within the exemption it is sufficient to show that (a) the *employer* is engaged "in the processing of . . . sugar cane . . . into sugar (but not refined sugar) or into syrup" and that (b) the work of the *employees* takes place in the "place of employment" where their employer is "engaged . . . in the processing of . . . sugar cane". We submit that both factors were present here.

The term "processing" as used in Section 7(c) has al-

[39] The Court of Appeals also recognized that the agriculture exemption in § 13(a)(6) and the processing exemption in § 7(c) overlap in many significant respects (R. 727, note 4). The Department of Labor has also repeatedly recognized such overlapping. *Cf.* ¶ 10(b) of Interpretative Bulletin No. 14 with ¶¶ 15-21 thereof. See also WHM 35:754-755. The two exemptions overlap because § 13(a)(6) is an exemption from both the wage and hour provisions of the Act, while § 7(c) is an exemption from the hour provisions alone. Congress intended that if a farmer processes his own crops, such processing should be wholly exempt under § 13(a)(6). On the other hand, any processor enjoys the overtime exemption under Section 7(c).

ways been held to include all activities which are necessary to processing. See cases and administrative interpretations discussed *infra*, pp. 68-72. As applied to Waialua and its employees, the "processing" included such necessary and incidental activities as the production of steam and power for use in performing the processing operations, the repair and maintenance of the mill and its equipment, the storage of supplies for the mill, laboratory work for the mill, and the hauling of raw materials, *i.e.*, the sugar cane to the mill. When the employees were engaged in such activities (*e.g.*, R. 85-86, 90, 205-206, 212-220, 223-226, 227-231, 243-248, 266-273, 286-288, 318-319), they were performing work just as necessary and as much related to sugar cane processing, as when they watched gauges in the boiling house or otherwise operated the processing machinery (R. 310-317).[49] The employees were engaged in processing, whether keeping the machines in repair at the adjoining machine shop (R. 227-231) or repairing the machines during breakdowns at the mill (R. 95, 96, 101) with the operating staff of Waialua standing by waiting for repairs to be completed. All the repair work, wherever and whenever done, was an indispensable requisite to the continued and effective operation of the processing facilities (R. 94 *et seq.*).

The term "place of employment" as used in Section 7(c) has always been held to include the roads and railways over which raw materials are transported to the processing plant and finished products away from it, as well as to include the several separate buildings in which the processing operation and other incidental operations necessary thereto are carried on, if in fact the employer conducts such operations in several buildings. See cases and administra-

[49] The District Court therefore clearly erred in finding (R. 798; see also R. 212) that the work of the employees in connection with steam and power for use in performing the processing operations was not part of Waialua's processing operations (R. 85-86, 90, 216, 218).

tive interpretations discussed *infra*, pp. 68-72. The term "place of employment" cannot mean simply a single building, when the operation, of practical necessity, requires more than one building, but it must embrace the entire premises on which are located all the buildings required in the "processing of . . . sugar cane . . . into sugar".

Thus, the employees under consideration, such as those who repaired the processing facilities, stored Waialua's supplies, did laboratory or office work in connection with processing operations, or engaged in hauling sugar cane from the fields to the mill or in repairing the hauling facilities, were working in the "place of employment" within the meaning of the statute. The buildings in which they worked, including the mill, service shops, storage places for Waialua's supplies, and other buildings, were located in a small, compact and contiguous area of the plantation (P. 38, 721, 723), as all repair, laboratory, warehouse and shipping activities of Waialua took place within 300 feet of the mill building proper (R. 94, 723).

Of the several exemptions granted by Section 7(c),[41] some describe operations which, typically, an employer conducts alone and not in combination with other operations not described in Section 7(c), *e.g.*, processing sugar cane into raw sugar and molasses, ginning and compressing cotton, processing cottonseed, and canning or packing fresh fruits or vegetables. Other exemptions in Section 7(*c*) describe operations which, typically, an employer does conduct in combination with other operations not described in the section, *e.g.*, handling, slaughtering or dressing poultry or livestock. For example, a meat packer will not only handle, slaughter and dress livestock, but he will also cure meats, make sausage and perhaps manufacture dog food, soap, glue and industrial oils. Such non-described opera-

[41] Section 7(c) grants exemptions to the processing of various agricultural commodities. The Section is set forth in full text in Appendix D, p. 102, *infra*.

tions do not fall within the exemption. *Fleming* v. *Swift*, 41 F. Supp. 825 (N. D. Ill.). But, when the particular exemption involved is one of the former type, the exemption applies to all operations which are necessary to the described processing operations, even though not performed in a building where the actual processing takes place. Accordingly, the sugar cane processing exemption applies to all operations which are necessary to sugar cane processing, including the activities listed *supra*, p. 64.

B. The Foregoing Analysis Is Fully Supported by the Applicable Cases and Administrative Interpretations.

1. *Cases.*

Heaburg v. *Independent Oil Mill, Inc.*, 46 F. Supp. 751 (W. D. Tenn.) (exemption for processing cottonseed held to apply to all employees of a cottonseed mill, including watchmen, clerical employees, and employees handling and selling bagging and ties, most of which was used to wrap and bind lint cotton—a by-product of the mill's business—but some of which was sold to cotton ginners); *Abram* v. *San Joaquin Cotton Oil Co.*, 49 F. Supp. 393 (S. D. Calif.) (exemption for processing cottonseed held to apply to employees working in several buildings and structures, including a seed storage house, mill, cleaning house, oil tanks, laboratory, and others, and engaged in laboratory work of analyzing crude cottonseed oil, including some oil from other plants, cleaning the oil, loading oil into tank cars, hauling trash, doing general work, janitorial work, and unloading cottonseed received at the mill); *Bowie* v. *Gonzalez*, 117 F. (2d) 11, 123 F. (2d) 387, 392 (C. C. A. 1) (opinion assumed that employees engaged in connection with hauling sugar cane to the employer's mill, including those repairing and maintaining the hauling facilities, but who did no work at the mill, were exempt under Sec. 7(c)); *Calaf* v. *Gonzalez*, 127 F. (2d) 934, 936-937 (C. C. A. 1) (opinion assumed that employees engaged in connection

with hauling sugar cane to the employer's mill were exempt under Sec. 7(c), including employees who did the following types of work: construction and repair of rolling stock, fireman, locomotive brakeman, splitting wood for engines, repairing main railroad line, signalling at grade crossings, and repairing railroad carts); *Byus* v. *Traders Compress Co.*, 59 F. Supp. 18 (W. D. Okla.) (Section 7(c) exemption for compressing cotton held applicable to pressers, truck drivers, and handy-men); *Walling* v. *McCracken County Peach Growers Ass'n.*, 50 F. Supp. 900 (W. D. Ky.) (Section 7(c) exemption for fruit packing held applicable to all employees of a fruit packing cooperative, including those who placed lids on the baskets in which the fruit was packed, those who labeled and stamped the baskets, clerical and supervisory employees, timekeepers, mechanics and watchmen); *Shain* v. *Armour*, 50 F. Supp. 907, 913 (W. D. Ky.) (Sec. 7(c) dairy products exemption held applicable to employees transporting cream to the employer's plant); *McComb* v. *Del Valle*, 80 F. Supp. 945 (D. Puerto Rico) (Sec. 7(c) sugar processing exemption held applicable to employees storing raw sugar in warehouses located 400 feet from the mill building proper); *McDaniel* v. *Clavin*, 128 P. (2d) 821, *aff'd* 22 Calif. (2d) 61, 136 P. (2d) 559 (Section 7(c) exemption for handling, slaughtering and dressing poultry held applicable to an employee picking up poultry at warehouses and delivering same to defendant's poultry plant, making deliveries to defendant's customers, opening cases of frozen poultry, dressing poultry, cleaning the premises, etc.)

The cases relied on by the District Court (R. 803, 804) are not in point. In each of those cases the employer was engaged not only in an operation which was exempt under Section 7(c) but also in other operations which were not exempt under Section 7(c) or under any other provision of the Act. Each of those cases held that the exemption was limited to employees whose activities related to the exempt operation, and held further that the exemption did not ex-

tend to employees whose activities related in whole or in part to non-exempt operations.[42] The principle of those cases is not applicable to Waialua. The operations of Waialua, in so far as they constituted the production of goods, were confined to (a) growing sugar cane and (b) processing same into raw sugar and molasses.[43] Waialua therefore was not engaged in any non-exempt operations.

2. *Administrative interpretations.*

(a) "The exemption thus granted to cottonseed processing differs from that granted in the same section of the Act to certain operations upon livestock. The latter exemption appears limited to certain particular operations, since Sec. 7(c) does not use any term descriptive of the meat packing industry, but uses only words describing certain particular operations in such industry. With this distinction in mind *it appears to us that all employees working in a plant engaged in processing cottonseed are within the exemption,* while this would not be true of all employees working in a plant engaged in handling, slaughtering or dressing livestock. In the latter case only the employees engaged in the enumerated operations or in operations that are an integral part thereof would be exempt" [Emphasis supplied]. *Opinion Letter of Department of Labor* written on July 9, 1941, set forth with approval in *Abram* v. *San Joaquin Cotton Oil Company,* 49 F. Supp. 393, 401 (S. D. Calif.).

(b) "*It should be noted, however, that a 'place of employment', although constituting only one establish-*

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[42] For example, in *Walling* v. *Bridgeman-Russell Co.,* (D. Minn.) 6 Labor Cases ¶ 61,422, the employer at his place of business not only was engaged in the first processing of milk and cream into dairy products, but he was also wholesaling eggs, fountain supplies, frosted foods, meats and other commodities and he was making ice cream mix and ice cream. The exemption was accordingly limited to those employees working in the first processing of milk and cream into dairy products.

[43] The incidental activities of Waialua with respect to its plantation housing are discussed in Point VI, *infra.*

ment, may contain several buildings in which the exempt operations are performed.

". . . truck drivers who carry raw materials to the establishment or who transport goods upon which the exempt operation has been performed may be considered as working in the 'place of employment', for they make regularly recurring trips to and from the establishment and may be deemed attached thereto. Further, some of their work, such as loading and unloading, takes place in the establishment." [Emphasis supplied] (*Interpretative Bulletin No. 14*, ¶ 22, *WHM* 35:360-361)

(c) "*Therefore, when an establishment is exclusively engaged in activities enumerated in the section [Sec. 7(c)], all of the employees of the operator of the establishment who work solely in that establishment, including office employees, watchmen, maintenance workers and warehousemen, come within the scope of these exemptions. In such a situation, the exemptions also apply to those employees of the plant operator whose duties consist of hauling agricultural commodities from the fields or from receiving stations to the plant for packing or processing, and to those who transport to market or to carriers for transportation to market goods upon which exempt operations have been performed in the plant*" [Emphasis supplied]. *WMH* 35:551

(d) ". . . where an establishment is *solely* engaged in the packing of fresh fruits or vegetables and refrigerator cars are spotted on tracks adjoining the plant, the employees of the packer engaged in bunker icing or in cooling cars solely for use in shipping fresh fruits and vegetables packed in that establishment are exempt" [Emphasis supplied]. *WHM* 35:554.

(e) "If the plant is used *solely* to pack fresh fruits and vegetables, the assembling of box shook by employees of the packer is exempt when performed during the active season *solely in the packing plant or in a warehouse located on the same premises*" [Emphasis supplied]. *WHM* 35:554.

(f) In a press release answering certain questions about the application of the Sec. 7(c) exemption to

canneries, the Department of Labor pointed out that a truck driver engaged solely in transporting canned citrus from a cannery to market was within the exemption and must be regarded as employed in those portions of the establishment devoted by the employer to the operations described in Sec. 7(c), *i.e.*, the canning of fresh fruits and vegetables. *WHM* 35:763.

(g) Employees of a sugar mill engaged in transporting by truck raw sugar from the sugar mill to the company's warehouse seven miles away are exempt under Sec. 7(c). *WHM* 35:769.

(h) By letter dated March 18, 1941, the Department held that the Sec. 7(c) exemption applies to pea vining stations in the fields if the work performed at the vineries and the cannery, to which vined peas are thereafter removed, is performed as part of a continuous series of operations throughout which the peas remain perishable. 3 *C. C. H. Labor Law Reporter*, ¶ 25,250.32.

(i) The removal of beet pulp residue from a sugar beet mill is a necessary incident to the production of sugar and hence within the Section 7(c) exemption for the processing of sugar beets into sugar or syrup. *WHM* 35:770-771.

(j) The Section 7(c) exemption for the first processing and canning of fresh fruits or vegetables applies to the making of cattle feed and molasses by a citrus canner from citrus waste as a part of a continuous series of operations starting with the fresh fruit. *WHM* 35:556.

(k) The Sec. 7(c) exemption for processing cottonseed applies not only to the oil mill in which the cottonseed is crushed but also to a storage house, in which hulls removed from the cottonseed and cottonseed meal are stored. *WHM* 35:772-773.[44]

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[44] Additional administrative interpretations in accord with the above are set forth in Appendix D, pp. 102-103, *infra*.

VI.

THE EMPLOYEES WERE NOT "ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE" WHEN THEY WERE ENGAGED IN (i) REPAIRING AND MAINTAINING WAIALUA'S DWELLING HOUSES LOCATED ON WAIALUA'S PLANTATION, AND (ii) FURNISHING, MAINTAINING, REPAIRING OR SERVICING RELATED DOMESTIC SERVICES OR FACILITIES (FIREWOOD, WATER, ELECTRICITY, BATH HOUSES, SEWAGE DISPOSAL, STREET MAINTENANCE AND CLEANING, PARKS AND PLAYGROUNDS, CLUBHOUSE AND OTHER RECREATIONAL FACILITIES) TO OR FOR THE LESSEES OF SUCH DWELLING HOUSES WHO INCLUDED BOTH EMPLOYEES OF WAIALUA AND OTHERS; BUT ASSUMING THAT THEY WERE "ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE" WHILE PERFORMING SUCH WORK, THEY WERE EXEMPT FROM THE OVERTIME PROVISIONS OF THE ACT UNDER SECTION 13(a)(6).

The Court of Appeals correctly concluded that the employees were not engaged in interstate commerce or in the production of goods for interstate commerce when performing dwelling repairs and maintaining related domestic facilities in the plantation villages (R. 735-736).

A. The District Court's Holding That Such Employees Were Engaged in the Production of Goods for Commerce (R. 805-817) Was Based Upon a Series of Findings Which Are Contrary to the Undisputed Facts in the Record.

All the evidence in the record bearing upon the issue appears in the Stipulation or amendment thereto (R. 118-122, 136-138, 164-167, 174-175, 180-181, 721, 722, 724; Stip. pp. 744, 759, 768, 770)[45] and in the oral testimony of the employees (R. 403-614). The material facts revealed by such evidence are:

1. *Housing maintenance and services.* When Waialua's predecessor company was organized in 1898, there was no

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[45] The pagination in the Stipulation referred to is the pagination in the Stipulation as originally filed in the District Court and not the re-numbered pagination of the Stipulation contained in the Certified Transcript.

established community having housing or other services or facilities for living in or near the area which it proposed to devote to the production and processing of sugar cane. Consequently, it became necessary for the company over a period of years to construct houses, develop services and otherwise establish facilities for permanent living on the plantation *to serve the needs* of the required number of employees and their families (R. 118). The principal plantation community was established around the plantation buildings and yard area and came to be known as the village of Waialua (R. 119, 721).

Waialua village, which is located within the city limits of Honolulu (R. 31), has all the physical and visual characteristics of an established community and is similar to a typical small village or town of a farming community center. The area is criss-crossed with government roads and highways and also roads and highways constructed and maintained by Waialua (R. 121, 722).

After the plantation was established and continued to operate, there gradually grew up an independent community now known as the village of Haleiwa, which is located off the edge of the plantation, about one mile from the village of Waialua (R. 119). Haleiwa is a small business and residential community made up of privately owned residences and typical small retail and service establishments. Haleiwa caters to Waialua's employees and to surrounding community residents, who include persons working at other locations on the Island of Oahu, residents of numerous beach houses, and Army and Navy personnel using beach recreational facilities. To some extent the village of Haleiwa has become integrated with the village of Waialua with common fire protection equipment and public police patrol officers serving both communities (R. 122).

No employee of Waialua, including each employee herein, is required as a condition of employment to live on the plantation or in plantation houses or to use any service or

facility which Waialua furnishes or renders its employees (R. 120). Some employees of Waialua, including some of the employees here involved (R. 601), live off the plantation and in houses not owned or supplied by Waialua (R. 428-429, 430, 433). The relationship existing between Waialua and its employees living in plantation houses is that of landlord and tenant; employees pay cash to Waialua for facilities and other services furnished them (R. 119, 120).[46]

2. *Clearly erroneous findings by the District Court.* The undisputed facts in the record are markedly contrary to the findings of the District Court.

(a) The Stipulation shows that the reason why Waialua constructed houses and developed services and living facilities for its employees was that there was no community with such facilities near the area which Waialua proposed to devote to the production and processing of sugar cane (R. 118). There is no evidence whatever supporting the District Court's finding that the houses and other living facilities were constructed and developed in order to establish a stable labor supply (R. 776, 810, 814); nor is there any evidence to show that Waialua's labor supply has in fact been stabilized by the establishment of the community.

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[46] Prior to November 1946, the employees of Waialua who lived in Waialua's dwelling houses received such facilities and services as part of their regular compensation (R. 118, 119). By the collective bargaining agreement, the wage provisions of which were effective on November 19, 1946 (R. 135, 136-137), this perquisite system was abolished, the value of the perquisites previously allowed being converted into cash wages and the employees in turn paying cash for facilities and services furnished them (R. 119, 136-137; Stip., p. 768). Contrary to the District Court's finding (R. 811), there is nothing in the record to show whether after this conversion the employees paid back to Waialua the same amounts as rental as they had previously been allowed in perquisites or whether they paid a different amount.

(b) There is no evidence to support the District Court's finding that Waialua's "villages" are isolated communities and insulated from the rest of the Territory or situated miles from any city (R. 810). The Stipulation shows, to the contrary, that the plantation is within the limits of the City and County of Honolulu (R. 31); that Waialua village is adjacent to the built-up community of Haleiwa (R. 119, 122, 721); and that there are main highways running through the village area on which employees may easily travel to and from nearby communities (R. 64, 722).

(c) The District Court's finding that the employees have no choice as to whether they will live in a house owned by Waialua (R. 814; see also R. 810) is also clearly erroneous. The employees' own witness testified that Waialua's employees do have a real choice or opportunity to purchase or rent homes in the community not owned or supplied by Waialua (R. 428-429, 430, 433; and see also R. 601). Moreover, the Stipulation shows that during the workweeks in issue, no employee was required as a condition of employment to live in a Waialua-owned house (R. 120), and that in fact some employees lived off the plantation in houses not own or supplied by Waialua (R. 121).

(d) Nothing in the evidence sustains the District Court's finding that the making of dwelling repairs and the maintenance of related domestic facilities are necessary to Waialua's production operations (R. 815); or that without such work Waialua's employees could not occupy the dwelling houses and there would be a marked interference with the production of goods for commerce (*id.*); or that Waialua undertook in its collective bargaining agreement (R. 129 *et seq.*) to provide dwelling maintenance and repairs and village services (R. 781, 811).

(e) The District Court's statement that rental of houses to non-employees is negligible (R. 811) is contrary to fact. Of the 3373 persons who live on the plantation, 421 are

lessees and their families who are not employed by Waialua (R. 120-121).

The District Court's key findings of fact were therefore clearly erroneous, and may be set aside under Rule 52(a), *Fed. Rules Civ. Proc.*, 28 U. S. C. A. Without such erroneous findings, the District Court's conclusion of law as to coverage of the employees is wholly unwarranted.

B. The Employees Were Not "Engaged in Commerce" While Performing Such Work.

The employees have conceded that while performing such work they were not "engaged in commerce". This concession was compelled by *McLeod* v. *Threlkeld*, 319 U. S. 491.

C. The Employees Were Not "Engaged . . . in the Production of Goods for Commerce" While Performing Such Work.

Section 3(j) of the Act, as it was worded during the period involved herein, provided that an employee was engaged in the production of goods if he was employed in "producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof . . ." The pertinent words were "in any . . . occupation necessary to the production" of goods.

In order for activities to be "necessary to the production" of goods, the activities must have a "close and immediate tie with the process of production", not merely a "tenuous relation" to such process. See *Kirschbaum* v. *Walling*, 316 U. S. 517, 525. The problem is essentially one of degree as to the number of "steps removed from the physical process of the production of goods". *See 10 East 40th Street Bldg., Inc.* v. *Callus*, 325 U. S. 578, 583; *cf. Alstate Construction Co.* v. *Durkin*, 345 U. S. 13, 16. And in applying this standard, this Court has emphasized that Congress in enacting this statute "plainly indicated its purpose to leave local business to the protection of the States", *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564,

570; *Higgins* v. *Carr Bros. Co.*, 317 U. S. 572, 574,[47] and "did not see fit, as it did in other regulatory measures, *e.g.*, the Interstate Commerce Act . . . and the National Labor Relations Act, . . . to exhaust its constitutional power over commerce." *10 East 40th Street Bldg., Inc.* v. *Callus*, 325 U. S. 578, 579; *McLeod* v. *Threlkeld*, 319 U. S. 491, 493.[48]

We submit that such work did not have such a "close and immediate tie with the process of production" of goods for interstate commerce as to be necessary to such production. The District Court's conclusion to the contrary (R. 805-817) is opposed by all the precedents involving employees in comparable work. *Wilson* v. *R. F. C.*, 158 F. (2d) 564 (C. C. A. 5), *cert. den.* 331 U. S. 810; *Coomer* v. *Durham*, 93 F. Supp. 526 (W. D. Va.); *Morris* v. *Beaumont Mfg. Co.*, 84 F. Supp. 909 (W. D. S. C.).

The following factors placed the employees beyond the scope of the Act:

First, the employees were employed on houses, facilities and services which were not themselves produced for or shipped in interstate commerce, nor were they used in or devoted to the production of goods for interstate commerce. They merely "serve[d] the needs" of the employees, as the parties stipulated (R. 118), when their occupants were *not* engaged in such production at all, but were wholly separated therefrom in space and function. Such

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[47] S. Rep. 884, Committee on Education and Labor, 75th Cong., 1st Sess., states: "The bill carefully excludes from its scope business in the several states that is of a purely local nature. It applies only to the industrial and business activities of the Nation insofar as they utilize the channels of interstate commerce, or seriously and substantially burden or harass such commerce. It leaves to States and local communities their own responsibilities concerning those local service and other business trades that do not substantially influence the stream of interstate commerce" (p. 5).

[48] The Hawaiian legislature has imposed its own wage and hour requirements with respect to the services in question. *Revised Laws of Hawaii*, 1945, Title 9, Ch. 75, Sections 4351-4366.

services were as remote from production for commerce as if provided in a village not owned by Waialua.

Second, they worked on homes the occupancy of which was optional with the production employees, including each employee herein (R. 120). The employees could live anywhere they chose, whether on or off the plantation. There were other nearby communities where they could live. The District Court's findings to the contrary, as we have shown, are in conflict with the evidence.

Third, there is no evidence to show that the making of dwelling repairs and the maintenance of related domestic facilities were necessary to Waialua's production operations during the period in issue, or that such operations were any more efficient because the employees did live on the plantation, or that those employees living off the plantation were any less efficient than those living on the plantation.

The village maintenance work here involved is therefore far removed from activities held "necessary to" production of goods for commerce in such cases as *Kirschbaum Co.* v. *Walling*, 316 U. S. 517; *Borden Co.* v. *Borella*, 325 U. S. 679; and *Alstate Construction Co.* v. *Durkin*, 345 U. S. 13. Such village maintenance employees are likewise further removed from production for commerce than the maintenance employees of an operator of a 48-story office building in New York, held excluded from coverage in *10 East 40th St. Bldg., Inc.* v. *Callus*, 325 U. S. 578, although the maintenance employees there involved actually furnished services to facilitate the tenants' interstate businesses during office hours. Here, however, the employees were merely satisfying personal needs of employees viewed as a part of the general consuming public and not as employees. The village is really a municipality, with all the physical characteristics of one and containing the usual buildings and establishments found in a municipality.

The essentially local work performed by the employees in repairing dwellings and maintaining related domestic

facilities is as remote from interstate commerce as the activities of plumbers, carpenters, electricians, housepainters and others in local trade in innumerable villages, towns and cities in the United States. The only difference is that here the employees were employed by the producer of goods for commerce—a difference which is not relevant in applying the commerce coverage of the Act, since such coverage is based upon the activities and work of the individual employee and not upon the business of his employer. See *Kirschbaum* v. *Walling*, 316 U. S. 517, 524; *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 571-572; *Mabee* v. *White Plains Publishing Co.*, 327 U. S. 178, 184-185. To bring these employees within the coverage of the Act is to wipe out entirely the distinction between local and interstate activities and to sweep under the Act those essentially local activities which Congress intended to leave to the protection of the States.[49]

D. Assuming That the Employees Performing Such Work Were Engaged in "Commerce or in the Production of Goods for Commerce", They Were Exempt From the Overtime Provisions of the Act by Virtue of Section 13(a)(6).

If the work here in question was within the commerce coverage of the Act, then by the same token, such work was exempt under Section 13(a)(6). If the housing ac-

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[49] The cases relied upon by the District Court (R. 806-810) are inapposite. The cookhouse cases (*Consolidated Timber Co.* v. *Womack*, 132 F. (2d) 101 (C. C. A. 9) and *Hanson* v. *Lagerstrom*, 133 F. (2d) 120 (C. C. A. 8)) were based upon this Court's decision in *Phila., B. & W. R. Co.* v. *Smith*, 250 U. S. 101. But shortly after the cookhouse cases were decided, this Court specifically held the *Smith* case inapplicable to coverage of the Fair Labor Standards Act. *McLeod* v. *Threlkeld*, 319 U. S. 491, 496. The cafeteria cases (R. 808-810), which are in conflict with each other, are also distinguishable because, unlike the situation in them, the employees in the instant case, who repaired houses and maintained related domestic facilities, "serve[d] the needs" of the production employees (R. 118) only when the latter were completely separated in space and function from the production of goods for commerce.

tivities of employees of Waialua are so related to the growing, cultivation, harvesting and processing of sugar cane that they are necessary for the production of goods for interstate commerce, they must necessarily constitute practices which are either incident to or in conjunction with Waialua's growing, cultivation, etc., activities.

This is shown by a comparison of the crucial statutory language defining the coverage of the Act on the one hand and the agriculture exemption on the other. Whether the making of dwelling repairs and the maintenance of related domestic facilities were necessary to the production of goods for commerce is determined by the definition of "produced" contained in Section 3(j). During the period here involved, such definition read:

> "'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in *any process or occupation necessary to the production* thereof, in any State" [Emphasis supplied].

Whether such work came within the agriculture exemption in turn depends upon the definition of agriculture contained in Section 3(f). Such definition reads in relevant part:

> "'Agriculture' includes . . . *any practices* (including any forestry or lumbering operations) performed by a farmer or on a farm as an *incident to or in conjunction with such farming operations* . . ." [Emphasis supplied].

In order to hold the work in question covered by the Act the Court must necessarily find that such work is *necessary* to the growing of Waialua's sugar cane and its processing. On the other hand, in order to bring such work within the agriculture exemption, the Court need only conclude that it is carried on by Waialua as an *incident to or in conjunction with* Waialua's farming operations. It would be un-

reasonable to hold that Waialua's growing and processing of sugar cane are so dependent upon its dwelling repairs and maintenance of related domestic facilities as to make the latter necessary to such growing and processing of sugar cane, without at the same time holding that the dwelling repairs and maintenance of related domestic facilities are incident to or in conjunction with the sugar cane growing and processing.

VII.

ANY EMPLOYEE, WHO IN A WORKWEEK PERFORMED WORK WHICH WAS EXEMPT UNDER SECTION 13(a)(6) OR SECTION 7(c), AND DID NOT DEVOTE A SUBSTANTIAL PART OF HIS TIME IN THE SAME WORKWEEK TO AN ACTIVITY WHICH WAS NOT SO EXEMPT, WAS EXEMPT FROM THE OVERTIME PROVISIONS OF THE ACT DURING THAT WORKWEEK.[20]

We have contended above that all the work performed by the employees during the workweeks covered by the litigation was exempt under either Section 13(a)(6) or Section 7(c). But if this Court is of the view that some of the activities of the employees were not exempt under Section 13(a)(6) or Section 7(c), it becomes material to ascertain the extent to which an employee may engage in nonexempt work in a workweek without losing the exemption otherwise applicable to him during that workweek.

The District Court evidently took the position that an employee, whose other work in a workweek was exempt

[20] In situations, where in the same workweeks employees performed both work that was not sufficiently close to commerce or to the production of goods for commerce to be considered covered by the Act at all, and work that was exempt under Section 13(a)(6) or Section 7(c), they were obviously excluded from the overtime provisions of the Act. The Department of Labor is in accord. WHM 35,708. The rule is the same with respect to an employee who worked part of the workweek in an activity deemed exempt under Section 13(a)(6) and the remainder in an activity deemed exempt under Section 7(c). 3 CCH Labor Law Reporter, ¶ 24,105.27. There is no issue presented herein with respect to these propositions.

under Section 13(a)(6) or Section 7(c), lost the exemption for the entire week if he devoted any part of his time, however insignificant, to a nonexempt activity during the same workweek (R. 817-819).[51] We submit that this ruling is unnecessarily harsh and renders meaningless for all practical purposes the exemptions provided by Section 13(a)(6) and Section 7(c). On most farms there is no such thing as the complete segregation of employees and activities. An employee will perform whatever duties are necessary to the farm's operations. But if the agriculture exemption in the Act is to be narrowly construed so that many activities performed on the farm are to be deemed non-exempt, then under the ruling of the District Court the agriculture exemption is of no avail to the farmer. The District Court's ruling means that in performing the operations necessary and indispensable to farming, the exemption is lost. And the same result follows with respect to the processing exemption provided by Section 7(c).

We submit, therefore, that Congress intended the exemption to apply to an employee in any workweek in which he does not devote a *substantial part* of his time to an activity not exempt under Section 13(a)(6) or Section 7(c). This rule takes cognizance of the realities of a farmer's or processor's operations. Moreover, it comports with the rules laid down by the Department of Labor with respect to many other exemption provisions in the Act. In the case of the exemptions for executives; administrative employees; professionals; local retailing capacity employees; and outside salesmen; retail establishments;[52] seamen;

[51] The Court of Appeals did not pass upon this point, since it took the position that each employee was totally exempt from the Act under Section 13(a)(6) in each workweek covered by the litigation (R. 746, note 45).

[52] With respect to the Section 13(a)(2) retail establishment exemption, the Department of Labor allowed a tolerance of 25% of non-exempt work in a workweek without loss of the exemption. The Department did this under such exemption prior to its amend-

carriers by air; fishery employees; local newspapers; street and suburban railways and local trolley and motor bus operators; switchboard operators; taxicab operators; employees engaged in forestry or lumbering operations; and employees of employers subject to Part I of the Interstate Commerce Act, the Department has permitted a tolerance of non-exempt work ranging from 20% to 49.999%. The Department has specifically said that these percentages of non-exempt work are insubstantial. The Department's rulings concerning these several exemptions are detailed in Appendix E, pp. 104-105, *infra*.

The reason for allowing a tolerance of nonexempt work in the case of exemptions is that many employees in occupations intended by Congress to be exempt under one or another of the exemption provisions perform some duties which do not strictly fall within the literal language of the exemption provisions. A failure to allow some tolerance therefore would result in so widespread a denial of the exemption provisions as to substantially defeat the Congressional intention in enacting them. This reason applies equally to the Section 13(a)(6) and 7(c) exemptions particularly in view of the breadth that Congress intended to accord such exemptions.

CONCLUSION IN NO. 358.

For the reasons stated in the argument in No. 358, the judgment of the Court of Appeals should be reversed, with appropriate directions.

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ment by the Fair Labor Standards Amendments of 1949 (63 Stat. 910), which specifically established a 25% tolerance of nonexempt work for retail establishments. The courts have repeatedly sanctioned the tolerance test. *Harris* v. *Hammond*, 145 F. (2d) 333, 334 (C. C. A. 5) *cert. den.* 324 U. S. 859; *Northwestern Hanna Fuel Co.* v. *McComb*, 166 F. (2d) 932, 937-938 (C. C. A. 8); *Brown* v. *Minn-Gas Co.*, 51 F. Supp. 363, 371 (D. Minn. 1943).

CONCLUSION IN NO. 357.

For the reasons stated in the argument in No. 357, the judgment of the Court of Appeals should be modified specifically (a) to set aside the judgment of the District Court; (b) to dismiss the counterclaim on the merits; (c) to adjudge, declare and decree that the petitioner-employees, while engaged in repairing dwellings and maintaining related domestic facilities on Waialua's plantation during the work-weeks in issue, were not engaged in commerce or in the production of goods for commerce; and (d) to adjudge, declare and decree that all the petitioner-employees were exempt from the overtime provisions of the Act during the work-weeks in issue by virtue of Section 13(a)(6) or Section 7(c) thereof.

Respectfully submitted,

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APPENDIX A.

Activities Engaged in By Each Employee.

1. *Field work and repair and maintenance of field equipment:* (i) preparation of land for planting, planting, ratooning, cultivation, fertilizing, irrigation, harvesting, and maintenance of field roads (Maneja, Asuncion, Hayashi, K. Okouchi, Watanabe (R. 191-204) and Crisostomo (R. 279-283)); (ii) repair, servicing, and maintenance of field equipment and implements, such as tractors, tractor auxiliary implements, caneloading machines, and pumps and other irrigation equipment (employees last mentioned and also Ezawa (R. 231-235), Reyher (R. 239-243), A. Robello (R. 273-276), Tanaka (R. 227-231), Takata (R. 243-248), Hironaka (R. 266-273), Yamada (R. 277-278), and Sunahara (R. 223-226)).

2. *Hauling and repair and maintenance of hauling equipment:* (i) hauling by narrow gauge railroad of sugar cane from fields to mill (Holmberg (R. 205-206)); (ii) hauling by truck on field roads of laborers and field supplies and equipment used for planting, cultivation and harvesting (Guigui (R. 235-239), Vierra (R. 248-256), and Crisostomo (R. 279-283)); (iii) miscellaneous hauling such as hauling by truck of laborers, supplies, and equipment to different places on plantation (Guigui (R. 235-239), Vierra (R. 248-256), and Crisostomo (R. 279-283)) (some of this latter type of hauling consisted of hauling from off the plantation to places on the plantation); (iv) repair, servicing, and maintenance of hauling equipment and facilities such as cane cars, locomotives, trucks, and the plantation railroad, including portable tracks (K. Okouchi (R. 198-201), Holmberg (R. 205-206), Faria (R. 206-208), Sera (R. 208-210), T. Okouchi (R. 210-212), Claunan (R. 220-223), Sunahara (R. 223-226), Tanaka (R. 227-231), Takata (R. 243-248), Mori (R. 264-265), Hironaka (R. 266-273), and A. Robello (R. 273-276)).

3. *Sugar Cane Processing and Repair and Maintenance of Processing Equipment:* (i) Processing of sugar cane at

mill and temporary storage, loading, and shipment of raw sugar and molasses (Hernandez, Dumlao, Kondo, Cumlat, Lazo, and Kubo (R. 310-317), Carrit and S. Robello (R. 216-220), and Hamamoto (R. 317-318)); (ii) repair, servicing, and maintenance of mill and its equipment (employees last mentioned and also Oato (R. 212-216), Sunahara (R. 223-226), Tanaka (R. 227-231), Takata (R. 243-248), and Hironaka (R. 266-273)).

4. *The making of concrete irrigation flumes*, water supply pipe, blocks, and other concrete products required for use on the plantation (Tsutsui (R. 257-258)).

5. *Storage of supplies and equipment* for field, hauling, mill, and repair activities of Waialua (Yack Chun Lee (R. 318-319)).

6. *Laboratory work* for (i) field operations of Waialua (Pacheco (R. 285-286)) and for (ii) hauling, processing, and activities referred to in "8", *infra* (Fujiwara (R. 286-288)).

7. *Office work* (Sakaguchi (R. 319-320)).

8. *Repair and maintenance of Waialua's dwelling houses* and the furnishing, maintaining, repairing, or servicing of related domestic services or facilities to or for the lessees of such dwelling houses (Sakai (R. 256-257), Kashiwabara (R. 259-263), Mori (R. 264-265), Yamada (R. 277-278), Fernandez (R. 234), Crisostomo (R. 279-283), Oato (R. 212-216), Hironaka (R. 266-273), Guigui (R. 235-239), and Vierra (R. 248-256)).

Certain employees performed work in only one group of activities in every workweek and are therefore listed only in that group. Other employees who are listed in several categories performed one group of activities exclusively in some workweeks, but in other workweeks performed a substantial amount of work in two or more groups of activities. Still other employees appearing in several groups did a substantial amount of work in many workweeks which

fell into several groups, and in no workweek did work that fell into one group exclusively. In various instances employees who did only minor amounts of work within a particular group of activities are not listed above as within the group. Complete information as to the work done by all of the employees within the various groups appears in the District Court's findings of fact (R. 190 *et seq.*, 308 *et seq.*).

APPENDIX B.

Legislative History of Sections 13(a)(6) and 3(f).

1. *Statement of Senator Schwellenbach that packing by a farmer of his own grown apples was exempt under the bill.*

> "When an apple grower picks his apples and takes them into his own warehouse . . . and in that warehouse packages them and then stores them, or perhaps first stores them and then packages them, the work being done by the farmer on his own farm, there is *no dispute about the fact that it is an agricultural* operation. . . . It seems to me that the bill, under the definitions as they now stand, places at a considerable disadvantage the man who is too small an operator to perform these operations upon his own farm . . .The picking of the apples is an agricultural process. If the man does it on his own ranch, the storing of the apples and the washing of the apples and the packing of the apples are all agricultural processes" [Emphasis supplied] 81 Cong. Rec. 7659.

To reach the situation about which he was complaining, Senator Schwellenbach later introduced an amendment to provide an exemption for persons employed within the area of production "in preparing, packing, or storing . . . fresh fruits or vegetables in their raw or natural state" (*Id.*, p. 7876). This amendment was adopted (*Id.*, p. 7949).

2. *Debate in Senate on processing of sugar cane.*

> "Mr. Overton. Let me invite the attention of the Senator to another agricultural industry in connection with which the processing, if it may be so called, by the farmer of his own product is much more general than in the case of the farmer ginning his own cotton. I refer to the sirup-cane producer who processes his own cane, grinds it, and makes it into sirup. Does he come within the provisions of the bill?
>
> * * * * * * * * * *
>
> "Mr. Black. The Senator can read the definition in *the bill and note that those things ordinarily done by*

farmers on the farm do not come under the provisions of the bill.

"Mr. Pepper. Mr. President, I wonder if the following language would not answer the questions of the Senator from Louisiana. It is found on page 51 of the bill, lines 13 and 14, being a part of the agricultural definition: 'And any practices ordinarily performed by a farmer as an incident to such farming operations.'

"Mr. Overton. It may and it may not. I was asking the Senator from Alabama because he is the author of the bill, and I was giving a concrete case . . . I have taken the case of a farmer who *plants his sugarcane, gathers it, and who on his own farm has a sirup mill and converts the juice of the cane into sirup. Does he come within the provisions of the bill?*

"Mr. Black. *The definition provides that those things done by the farmer ordinarily on his farm* constitute a part of his farming business. It would *depend upon whether or not that was an ordinary incident to that type of farming business in the State where sirup is made. If so, that would be agriculture under the definition of the bill.*

* * * * * * * * * * *

"Mr. Overton. It would not be considered an ordinary practice performed by a farmer as an incident to his farming operations for the reason that we also have large sirup mills. Such sirup mills gather in the cane produced by the different farmers and process it into sirup. But it is of frequent occurrence that a farmer has a mill on his own farm and converts his own cane juice into sirup. With that explanation, would the Senator say the practice of such a farmer is one ordinarily performed by a farmer as an incident to his farming operations?

"Mr. Black. If the Senator says it is a practice not ordinarily performed by a farmer as incident to his farming operations, I would necessarily say it was a practice not ordinarily performed by a farmer as incident to his farming operations, and therefore would not come under the definition. I am assuming it is a practice which is not ordinarily engaged in, by farmers.

"Mr. Overton. Not altogether engaged in, but frequently engaged in by farmers.

"Mr. Black. For instance, a farmer might build on his farm a factory for the purpose of manufacturing shirts and sending them throughout the United States. Since that is a practice not ordinarily engaged in by farmers on their farms, naturally that would not be considered a farming activity.

"Mr. Overton. *Let us take the sugar manufacturer. On some plantations there are mills in which the planters may manufacture their own cane into sugar. Would they come within the provision of the bill?*

"Mr. Black. *As I said, it would depend upon whether or not that comes within the definition under the facts of operation, whether it is a necessary incident to that type of cane farming. I am not sufficiently familiar with it as it exists in the Senator's State of Louisiana to be able even to venture an opinion.*

"Mr. Overton. As I understand the Senator, in cases where some farmers process their own products and other farmers carry their products to some processor to be processed, then by reason of the fact that some farmers carry their products to a processor to be processed, the farmers who process their own products would not be considered as engaging in a practice which is ordinarily incident to farming operations.

"Mr. Black. I could not say as to that. It depends altogether on the facts as to what is a necessary incident to farming. As I said, there are some things so far removed from farming that all of us would know instantly they did not constitute a farming operation. The illustration I gave was of a farmer erecting on his farm a factory and manufacturing anything you please, whether something he grows or not, who employs many people to manufacture it, and then ships it in interstate commerce. The mere fact that he has such a plant on his farm would not make the manufacturing of shirts, for instance, a farming operation. It would still be a manufacturing operation. The same reasoning would apply to any other process of manufacturing" [Emphasis supplied]. 81 Cong. Rec. 7657-7658.

3. *Debate on Senator McGill's amendment to provide that the agriculture exemption should apply (1) to prac-*

tices performed on a farm as an incident to farming operations and (2) to "delivery to market."

"Mr. McGill. Mr. President, the purpose of the amendment is to broaden the definition of 'employee' as applied to agriculture. I can readily see how some have construed the language of the bill to mean that one who operates a thrashing [sic] machine outfit and employs a crew and is employed by a farmer to thrash [sic] his wheat might be included under the provisions of the bill. *Likewise, those who are engaged in harvesting and delivery to market might be included.* It is my understanding, although no definite commitment has been made, that the amendment is not opposed by those in charge of the bill. If I am correct, I should like to have the amendment agreed to.

* * * * * * * * * *

"Mr. George. Is it the purpose of the amendment to exempt those who thresh grain?

"Mr. McGill. Those who thresh grain, who harvest grain and *deliver it to market.*

"Mr. George. Would the amendment also *apply to the harvesting of any other crop?*

"Mr. McGill. *It would apply to any commodity produced on a farm.*

"Mr. George. Would it apply to peanut pickers who pick in the fields?

"Mr. McGill. Yes.

"Mr. George. *And who move peanuts to the market?*

"Mr. McGill. *Yes;* that is my understanding.

"Mr. George. I should like to ask the Senator from Alabama if that is his interpretation of the amendment.

"Mr. Black. *That is my interpretation of the amendment,* and it is my belief that the bill as originally drawn covers what is now contained in the language of the amendment; but some Senators who were doubtful about it wished to draw a clarifying amendment.

"Mr. George. I am sure it does not in fact do so, because the picking of peanuts and the harvesting of grain in my part of the country are done purely by contract with outsiders, who in a great many cases have no farm interest. What I want to get at is whether, in the opinion of the Senator from Alabama, the language of the amendment of the Senator from

Kansas includes any field crop that is threshed, as in the case of grain, or picked, as in the case of peanuts in the field.

"Mr. Black. *Unquestionably.*

"Mr. McGill. I may say to the Senator from Georgia and other Senators that it is my object to make the language of the amendment broad enough to include all work done on a farm, *so long as it is incidental to agricultural purposes.*

"Mr. George. *And so long as it is merely preparatory and necessarily preparatory to the marketing of the field crop.* Is that true?

"Mr. McGill. *That is true; and the language would also include all labor performed in making delivery to market.*

"Mr. George. I thank the Senator.

"Mr. Copeland. Of course, that would take care of my apple man, about whom I have been worrying, would it not? *It would take care of the farmer who takes his crop of apples to the market, would it not?*

"Mr. McGill. That is correct. [Emphasis supplied]. 81 Cong. Rec. 7888.

4. *Debate on amendment proposed by Senator McAdoo.*

Senator McAdoo proposed an amendment, substituting for the language in the definition of agriculture relating to practices ordinarily performed in connection with farming operations, the following:

"Any practices ordinarily performed by or for a farmer as an incident to such farming, including harvesting, packing, storing, or preparing for market, in the raw or natural state, any products derived from any of the above agricultural pursuits." 81 Cong. Rec. 7927.

The following discussion ensued:

"Mr. McGill. Yesterday afternoon the Senate amended the lines to which the Senator's amendment applies by inserting in line 13, after the word 'farmer', the words 'or on a farm', and also by inserting in line 14, after the word 'operations', the words 'including

delivery to market', *it being the purpose of these amendments to exclude from the bill all labor performed on a farm*, whether by contract with the farmer or otherwise, and to *exclude all labor connected with the delivery to market of commodities produced on a farm* . . .

* * * * * * * * * * *

". . . I will state that I feel the amendment adopted yesterday is broader than the amendment proposed by the Senator from California, by virtue of the fact that no limitation was placed in the amendment adopted yesterday, such as mentioning harvesting, packing, and operations of that character. *The amendment adopted yesterday was intended to include, and I think, it does include, all kinds of labor performed on a farm and all kinds of labor in connection with delivering agricultural products to market.* In my judgment it includes more than does the amendment proposed by the Senator from California and is broader in its terms. I hope that the amendment adopted yesterday will remain in the bill and that the amendment of the Senator from California by virtue of the narrower terms carried in it, will be rejected. . . .

"Mr. George. I suggest to the Senator from California that, in my opinion the amendment offered by the Senator from Kansas [Mr. McGill] yesterday is broader than his amendment, because it takes care of all operations, whether performed by cooperatives or by persons under contract or by persons who have merely been employed for a particular job. To enumerate even them in a succeeding clause, or to recite the things that are included, would thus, of course, under the well-known rule of construction, form a limitation upon what is first stated as a broad general proposition. I think the Senator's purpose is absolutely accomplished by the amendment offered yesterday by the Senator from Kansas.

"I may say to the Senator from California that I had in mind precisely what he has in mind, but with reference to different products. After examining the amendment of the Senator from Kansas I concluded that it covered all those cases as well as the cases which I think the Senator himself has in mind" [Emphasis supplied]. *Id.*, pp. 7927, 7928-7929.

5. *Debate on Conference Report between Senator Thomas and Senator Johnson.*

"Mr. Johnson of California. *I take it from what the Senator has said that the agricultural exemptions are practically plenary, and take in almost all agricultural products.*

"Mr. Thomas of Utah. *I could not hear part of the Senator's sentence.*

"Mr. Johnson of California. *I said that, in general language, agriculture is exempted from the operation of the bill.*

"Mr. Thomas of Utah. *It is.*

"Mr. Johnson of California. *Does the Senator know of any particular kind of agriculture that is included in the bill?*

"Mr. Thomas of Utah. *I do not know of any. The definition seems to be all-inclusive, and we tried to make it so*" [Emphasis supplied]. 83 Cong. Rec. 9162-9163.

APPENDIX C.

Department of Labor Interpretations of Sections 13(a)(6) and 3(f).

1. *Interpretative Bulletin No. 14* (*WHM* 35:351-366).

"Production, Cultivation, Growing, and Harvesting of Any Agricultural or Horticultural Commodities"

"5. (a) . . . The term 'harvesting of any agricultural or horticultural commodities' includes all operations customarily performed in connection with the removal of the crops by the farmer from their growing position in the field, greenhouse, etc."

* * * * * * * * * * *

"Practices . . . Performed by a Farmer"

"10. . . . It should be noted with respect to all of these practices that they must be performed by the farmer and his employees and that such practices must be incident to or in conjunction with the farming operations of the farmer. It makes no difference whether they are performed on or off the farm if performed by a farmer. . . .

"When a farmer is engaged in these practices on agricultural or horticultural commodities grown on other farms as well as his own, as for example, when he cans tomatoes which come both from his farm and from the farms of others, such operations do not seem to be incident to or in conjunction with his farming operations. In our opinion such operations assume the aspect of an independent business and do not fall within this exemption."

* * * * * * * * * * *

"Preparation for Market (Performed by a Farmer)"

"(b) The term 'preparation for market' must be treated differently with respect to various commodities. The following activities, among others, when performed by a farmer, seem to be included within the term:

1. *Grain, seed, and forage crops.*—Weighing, binning, stacking, cleaning, grading, shelling, sorting, packing, and storing.

2. *Fruits and vegetables.*—Assembling, binning, ripening, cleaning, grading, sorting, drying, preserving, *packing*, storing, and *canning*.

3. *Nuts (pecans, walnuts, peanuts, etc.)*—Grading, cracking, shelling, cleaning, sorting, packing and storing, unshelled nuts; and performing the same operations except cracking and shelling, upon the nut meats.

4. *Sugar.*—*Manufacturing raw sugar*, cane, or maple syrup and molasses.

5. *Eggs.*—Handling, cooling, grading, and packing.

6. *Wool.*—Grading and packing.

7. *Dairy products.*—Salting, printing, wrapping, packing, and storing butter; ripening, molding, wrapping, packing, and storing cheese, and *canning or packing any other dairy product.*

8. *Cotton.*—Weighing, *ginning*, and storing cotton; hulling, delinting, cleaning, sacking, and storing cottonseed.

9. *Nursery stock.*—Handling, wrapping, packaging, and grading.

10. *Tobacco.*—Handling, drying, bulking, stripping, tying, sorting, *stemming*, packing, and storing.

11. *Livestock.*—Handling and loading.

12. *Poultry.*—Culling, grading, cooping, and loading.

13. *Honey.*—Assembling, extracting, heating, ripening, removing comb, straining, cleaning, grading, weighing, blending, packing, and storing.

14. *Fur.*—Removing the pelt, scraping, drying, putting on boards, and packing."

"Delivery to Storage (Performed by a Farmer)"

"(e) The term 'delivery to storage' includes taking the commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to the places where they are to be stored or held pending preparation for or delivery to market."

"Delivery . . . to Market (Performed by a Farmer)"

"(d) The term 'delivery . . . to market' includes taking the commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, or poultry to market."

"Delivery . . . to Carriers for Transportation to Market (Performed by a Farmer)"

"(e) The term 'delivery . . . to carriers for transportation to market' includes taking the commodities, dairy products, livestock, bees or their honey, fur-bearing animals or their pelts, and poultry to a carrier—truck, railroad, ship, etc.—for transportation by such carrier to market."

"Other Practices (Performed by a Farmer)"

"(f) Besides the practices listed in the statute as being incident to or in conjunction with farming operations, there are other practices included within the exemption.

"The actual selling of the agricultural or horticultural commodities, etc., is such a practice. *The truck drivers working for a farmer, who haul garbage and feed to the farm for feeding pigs, also perform practices that are exempt. If a company has sugarcane fields and also a mill, the transportation of its own sugarcane to the mill seems an incidental practice which is included in this term.*

"It must be emphasized with respect to all practices performed by a farmer, for which a claim is made that they are incident to or in conjunction with his farming operations, that they must be performed *only* on the agricultural or horticultural commodities, dairy products, livestock, bees, fur-bearing animals, or poultry produced or raised by him. The same limitation applies with respect to the practices discussed in paragraph 11, below."

"Practices . . . Performed . . . on a Farm"

"11. The term 'practices (including any forestry or lumbering operations) *performed . . . on a farm* as an incident to or in conjunction with' farming operations, involves substantially the same inquiries as those discussed in paragraph 10.

"It should be observed, however, that since these practices must be performed *on a farm*, one of the ac-

tivities listed in the statute, namely, delivery to market, cannot normally be one of the included practices, for that involves working off the farm. Hence, employees of independent contractors engaged in transporting to market agricultural or horticultural commodities, dairy products, poultry, livestock, bees or their honey, and fur-bearing animals or their pelts, would not be exempt. With that exception, practices described in paragraph 10, even if performed by employees of someone other than the farmer, are excluded from the wage and hour coverage of the act, so long as they are performed on the farm and 'as an incident to or in conjunction with such farming operations.'

"Thus, if an independent contractor threshes wheat on a farm, his employees are not subject to the wage and hour provisions of the act while they are so engaged on the farm where the wheat is grown. So, too, employees of an independent contractor who inspect and cull flocks of poultry on a farm are exempt while they are working on the farm where such poultry is raised. Similarly, employees erecting a silo on a farm are exempt while they are working on such farm."

"Office Workers, Etc."

"12. *We have received inquiries concerning office help—secretaries, clerks, bookkeepers, etc.—night watchmen, maintenance workers, engineers, etc., who are employed by a farmer or on a farm in connection with the activities described in the definition of 'agriculture' contained in section 3(f). In our opinion such employees are exempt.*" [Emphasis supplied].

2. *Other Administrative Interpretations*

The Department in various opinion letters and releases has held the following to come within the agriculture exemption:

(a) Employees of an alfalfa grower, who haul the alfalfa grown by the grower to a processing plant located off the farm. *WHM* 35:754.

(b) The removal of stumps by employees of an independent contractor from cut over timber land owned by a

lumber company and now devoted by the lumber company to the growing of tung trees, where such removal and the plowing and fertilizing of the ground around the tung trees were necessary to the proper growth of the trees. *WHM* 35:751-752.

(c) Sorting, grading, sizing and other practices performed on tobacco by a tobacco company, if the company does this work on tobacco it grows itself or does it on the farm where such tobacco is grown. *WHM* 35:752-753.

(d) Work on the farm by field men of a cannery to which the farmer had contracted to sell his crops, notwithstanding such field men from time to time report to the canning plant. 3 *C. C. H. Labor Law Reporter* ¶ 25,242.203.

(e) Pre-cooling operations on the farm with respect to fruits and vegetables grown on the farm. 3 *C. C. H. Labor Law Reporter* ¶ 25,242.21.

(f) Logging operations performed by the farmer or on his farm with respect to timber blown down in a hurricane. 3 *C. C. H. Labor Law Reporter* ¶ 25,242.252.

(g) Vining of peas grown on a farm by a vinery located thereon. 3 *C. C. H. Labor Law Reporter* ¶ 25,242.281.

(h) Tobacco stemming by a farmer or on a farm. 3 *C. C. H. Labor Law Reporter* ¶ 25,242.344.

APPENDIX D.

Text of Section 7(c) and Department of Labor's Interpretations.

1. *Text of Sec. 7(c).*

Section 7(c) read as follows during the period involved in this action (1946-1947):

> "In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugar cane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged."

2. *Paragraph 18 of Interpretative Bulletin No. 14.*

> ". . . The term 'raw sugar' describes the product of the first processing of sugar cane, which product normally is thereafter refined before it is consumed. The processing of sugar cane into raw sugar is within the exemption; . . ." ¶ 18, *WHM* 35:358.

* * * * * * * * * *

3. *Interpretations as to which employees of a processor are exempt under Section 7(c).*

> "When an establishment is *exclusively* engaged in performing operations specifically mentioned in Sec. 7(c), every employee working in such a plant either will be actually engaged in the described operations,

or else will be engaged in an occupation which is a necessary incident to the described operations and working solely in a portion of the premises devoted by his employer to such operations. [Emphasis supplied] *WHM* 35:551

* * * * * * * * * *

"At present, if an establishment is engaged exclusively in the operations exempted under section 7(c), generally speaking all employees employed in that establishment are exempt from the overtime provisions of the act for either the entire year or 14 weeks a year, depending on the particular activities involved. This includes office, custodial and maintenance employees." *Statement of Secretary of Labor Schwellenbach* submitted to Senate Committee on Labor and Public Welfare, Hearings on S. 2386 and other bills, 80th Cong., 2nd Sess., p. 183.

* * * * * * * * * *

An Opinion of the Department of Labor, dated March 18, 1941, held that the Sec. 7(c) exemption applied to field men employed by canneries to supervise the production and harvesting of raw products purchased under acreage contracts. These men, like the employees hauling cane to the mill in the instant case, spend most of their time in the fields but they make the cannery their headquarters and make regularly recurring trips to and from the cannery. The Department held that they should be considered as working in the "place of employment". 3 *C. C. H. Labor Law Reporter*, ¶ 25,250.255.

APPENDIX E.

Department of Labor's Allowance of Tolerance of Non-Exempt Work in the Case of Most Exemption Provisions in the Act.

In the case of the following exemptions, the Department of Labor has allowed the indicated percentage of non-exempt work in a workweek without loss of the exemption:

Sec. 13(a)(1) exemption for executives, administrative employees, professionals, local retailing capacity employees and outside salesmen—20%.[1]

Sec. 13(a)(2) exemption for retail establishments—25%.[2]

Sec. 13(a)(3) [now Sec. 13(a)(14)] exemption for seamen—20%.[3]

Sec. 13(a)(4) [now Sec. 13(b)(3)] exemption for carriers by air—20%.[4]

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[1] Regulations, Pt. 541, Subpart A, Title 29, Ch. V, Code of Fed. Reg. (14 F. R. 7705) §§ 541.1(e), 541.2(d), 541.3(d), 541.4(b) and 541.5(b); 3 C. C. H. Labor Law Reporter ¶¶ 23,301.01(e), 23,301.02(d), 23,301.03(d), 23,301.04(b), 23,301.05(b); WHM 20:3 to 20:5. See *Knight* v. *Mantel*, 135 F. (2d) 514, 517-518 (C. C. A. 8), *Bender* v. *Crucible Steel*, 71 F. Supp. 420, 425 (W. D. Pa. 1947), both of which applied the 20% test. See also *Walling* v. *General Industries*, 330 U. S. 545, 547; *Atkinson Co.* v. *Lassiter*, 162 F. (2d) 774, 777 (C. C. A. 9), judgment vacated on other grounds, 166 F. (2d) 144; and *Helliwell* v. *Haberman*, 140 F. (2d) 833, 834 (C. C. A. 2) which seem to approve the 20% test.

[2] As explained, *supra*, p. 83, note 52, the 1949 amendments specifically wrote the 25% test into the law for retail establishments. The tolerance referred to in the text was that permitted by the Department prior to such amendments.

[3] Title 29, Ch. V, Code of Fed. Reg., Pt. 783 (13 F. R. 1376, 14 F. R. 3678), § 783.4; 3 C. C. H. Labor Law Reporter ¶ 24,109.50; WHM 15:547.

[4] Title 29, Ch. V, Code of Fed. Reg., Pt. 786, Subpart A (13 F. R. 1376) § 786.1; 3 C. C. H. Labor Law Reporter ¶ 24,112.01; WHM 15:15.

Sec. 13(a)(5) fishery exemption—20%.[5]

Sec. 13(a)(8) exemption for local newspapers—49.999%.[6]

Sec. 13(a)(9) exemption for street, suburban, etc., railways and local trolley and motor bus operators—20%.[7]

Sec. 13(a)(11) exemption for switchboard operators—20%.[8]

Sec. 13(a)(12) exemption for taxicab operators—20%.[9]

Sec. 13(a)(15) exemption for forestry or logging operations in which not more than 12 employees are employed—20%.[10]

Sec. 13(b)(2) exemption for employees of employers subject to Part I of the Interstate Commerce Act—20%.[11]

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[5] Title 29, Ch. V, Code of Fed. Reg., Pt. 784 (13 F. R. 1376) § 784.1; 3 C. C. H. Labor Law Reporter ¶ 24,110.01; WHM 15:82.

[6] 3 C. C. H. Labor Law Reporter ¶¶ 25,260.05 and 25,260.34; WHM 15:313. The 49.999% test was also applied in *Robinson* v. *North Arkansas Printing Co.*, 71 F. Supp. 921, 923 (W. D. Ark).

[7] Title 29, Ch. V, Code of Fed. Reg., Pt. 786, Subpart B (13 F. R. 1376) § 786.50; 3 C. C. H. Labor Law Reporter ¶ 24,112.50; WHM 15:147.

[8] Title 29, Ch. V, Code of Fed. Reg., Pt. 786, Subpart C (13 F. R. 1376) § 786.100; 3 C. C. H. Labor Law Reporter ¶ 24,112.100; WHM 15:687.

[9] Title 29, Ch. V, Code of Fed. Reg., Pt. 786, Subpart E (19 F. R. 430) § 786.2; 3 C. C. H. Labor Law Reporter ¶ 24,112.2; WHM 15:645.

[10] Title 29, Ch. V, Code of Fed. Reg., Pt. 788, § 788.7; 3 C. C. H. Labor Law Reporter ¶ 24,114.07; WHM 15:110.

[11] Title 29, Ch. V, Code of Fed Reg., Pt. 786, Subpart D (13 F. R. 1376) § 786.150; 3 C. C. H. Labor Law Reporter ¶ 24,112.150; WHM 15:345.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

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BRIEF FOR WAIALUA AGRICULTURAL COMPANY, LIMITED IN ANSWER TO BRIEFS OF CIRACO MANEJA, ET AL. AND OF THE SECRETARY OF LABOR AS AMICUS CURIAE

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BRIEF FOR WAIALUA AGRICULTURAL COMPANY, LIMITED IN ANSWER TO BRIEFS OF CIRACO MANEJA, ET AL. AND OF THE SECRETARY OF LABOR AS AMICUS CURIAE

Waialua respectfully submits this brief in answer to both the Employees' Brief and the brief for the Secretary of Labor as *amicus curiae.*

I. THE EMPLOYEES WERE WITHIN THE AGRICULTURE EXEMPTION IN SECTION 13(a)(6) OF THE ACT

The positions of the parties, as well as that of the Secretary, on the scope of the agriculture exemption in the Act, as disclosed by their briefs, may be summarized as follows:

Waialua's position is that the agriculture exemption excludes from the Act all activities performed by the farmer or on the farm in connection with growing and marketing the farm's crops. As applied to Waialua, the exemption therefore excludes from the Act all activities in connection with the growing and the preparation for market of its sugar cane.

The Employees and Secretary argue, however, that the agriculture exemption should be confined to employees engaged in field activities and should be denied to employees engaged in such activities as railroad transportation, cane processing, and repair and maintenance work.[1]

The arguments of the Secretary and Employees, not treated in Waialua's original Brief, are dealt with below.

A. The Plain Language and Intent of the Agriculture Exemption Cannot Be Nullified by Purported Rules of Statutory Construction.

The Secretary asserts that the coverage of the Act should be construed "broadly" and exemptions "narrowly"—and when so construed, the agriculture exemption is inapplicable to such activities as main line railroad transportation, repair and maintenance work and cane processing. Secretary's Br., pp. 23-24, 25, 26, 32, 45-46. Waialua submits that general "rules of statutory construction" cannot nullify both statutory language and Congressional purpose. *Cf. Isbrandtsen Co.* v. *Johnson*, 343 U.S. 779, 783; *United States* v. *Hood*, 343 U.S. 148, 151.

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[1] The Secretary states in his Brief that he has never expressed an opinion on the coverage under the Act of village maintenance employees, nor does he do so now. Secretary's Br., p. 3. The Employees, however, ask that the village maintenance employees be held engaged in the production of goods for commerce and not within the agriculture exemption. Employees' Br., pp. 61-71. It should also be observed that, as noted by the Secretary, after Section 3(j) of the Act was amended in 1949, the Secretary expressed the opinion that such village maintenance employees would not be covered. Secretary's Br., p. 3, note 1.

The unsoundness of the Secretary's position is clearly revealed by making comparison of the "coverage" language of the Act with the language found in the agriculture exemption. The Act's coverage with respect to the activities here in issue is fixed by Section 3(j) which defined the word "produced" as meaning

> ". . . produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in *any process or occupation necessary to the production* thereof, in any State" [Emphasis supplied].

On the other hand the agriculture exemption is defined in Section 3(f) as including

> "farming in all its branches . . . cultivation and tillage of the soil . . . the production, cultivation, growing, and harvesting of any agricultural . . . commodities . . . and *any practices* (including any forestry or lumbering operations) performed by a farmer or on a farm as an *incident to or in conjunction with such farming operations*, including preparation for market, delivery to storage or to market or to carriers for transportation to market" [Emphasis supplied].

The Ninth Circuit concluded that none of the activities here involved comes within the commerce coverage of the Act (R. 740, 742-743). Waialua believes (Br., p. 31) that all but mill village workers are covered under Section 3(j), but that all employees involved are exempt under Section 3(f). If this Court is to hold covered the employees engaged in railroad transportation, repair and maintenance work, etc., it must place primary reliance upon the phrase in Section 3(j) reading "any process or occupation necessary to the production" of goods. *Kirschbaum* v. *Walling*, 316 U.S. 517, 524-526; *Armour* v. *Wantock*, 323 U.S. 126,

129-132; *Borden* v. *Borella*, 325 U.S. 679, 682-685; *Roland Electrical Company* v. *Walling*, 326 U.S. 657, 662-665. In other words, the work of these employees comes within the reach of the statute only if the Court concludes that such work is "necessary" to the growing and marketing of Waialua's sugar cane. But an activity is "agriculture" if it is simply "incident to or in conjunction with" the growing and marketing of Waialua's sugar cane. For example, the Secretary is asking this Court to hold that the employees of a farmer, who are engaged in railroad transportation on a farm, are so necessary to the production of cane as to fall within the coverage of the Act, but that such transportation is not an activity "incident to or in conjunction with" the production of the cane. Manifestly the test of being "necessary" to the production of sugar cane is a more rigid test and one more difficult to meet than the test of being "incident to or in conjunction with" such production, where, as here, the practices are engaged in by a farmer on his farm. The Secretary's argument is therefore untenable.[2]

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[2] Our argument is plainly distinguishable from the argument rejected in the *Farmers Irrigation Company* case (337 U.S. 755), that the irrigation operation there performed by the cooperative irrigation company constituted the "production . . . of . . . agricultural . . . commodities" within the meaning of Section 3(f), because "produced" is defined in 3(j) as including "any . . . occupation necessary" to production. This Court pointed out that the irrigation company's employees were not "in any normal use of the term" engaged in the production of agricultural commodities. 337 U.S. at 766. It held that the word "production" was not used in Section 3(f) in the special sense in which it was defined in Section 3(j), for if it were used in that sense it would make surplusage of the remainder of the "carefully wrought definition" in Section 3(f). *Id.*, pp. 764, 766. Moreover, the Court said that the legislative history of the use of the word "production" in Section 3(f) shows that it was added to take care of the "production of turpentine and gum rosins"—an activity which would not be reached by simply the words "cultivation" or "growing". *Id.*, p. 765. Our argument here is not based

In this Act, unlike the National Labor Relations Act, Congress was not satisfied with merely including an undefined exemption for agricultural labor, but carefully provided a detailed definition of "agriculture". As stated in *Damutz* v. *Pinchbeck*, 158 F. (2d) 882, 883 (C.C.A. 2) . . .

> "this exemption provision . . . is drawn in far-reaching language which shows the intent of Congress to make the term 'agriculture' cover much more than what might be called ordinary farming activity and that is what now controls. Differing definitions of 'agriculture' in other statutes but indicate different Congressional methods in dealing with other matters and cannot serve to narrow the scope of this one".[3]

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upon seeking to apply the definition of "produced" in Section 3(j) to Section 3(f). We argue simply that if the activities here involved are "necessary" to the production of sugarcane within the meaning of Section 3(j), *a fortiori*, they are "incident to or in conjunction with" the production of the cane and hence come within the second and broader branch of the definition of agriculture. Waialua's Br., pp. 36, 55-57. This issue was not presented in the *Farmers Irrigation Company* case, since the cooperative there involved did not meet the overriding requirement of the second branch that the practices be "performed by a farmer or on a farm." *Id.*, pp. 766-767. The issue is squarely presented here, where the practices in issue were performed by a farmer *and* on a farm. Waialua's Brief, pp. 37-40.

[3] *Waialua Agricultural Co.* v. *United Sugar Workers, ILWU Local 142 et al.*, 114 F. Supp. 243 (D. Hawaii 1953), relied upon by the Employees (Br., p. 46), is therefore inapposite. That was a suit for breach of a collective bargaining contract brought under Title III of the Labor Management Relations Act, 1947. The court there made it abundantly clear that it was construing simply the term "agricultural laborer" as used in that Act and that it did not regard the definition of "agriculture" contained in the Fair Labor Standards Act as having any bearing upon the issue before it, because that was "a different statute which supplied a Congressional definition of the term 'agriculture', 29 U.S.C.A. § 203(f), a definition not included in the Labor-Management Relations Act". *Id.*, p. 247.

Moreover, the unsoundness of the Secretary's position is further shown by an examination of the Congressional purpose behind the agriculture exemption. The exclusion of all agriculture from the Act was predicated upon a Congressional policy which must be effectuated in the agricultural area to no lesser extent than the Congressional policy concerning the covered industrial area. Congress was as anxious to exempt the farmer in all his activities as it was to cover the industrial workers. Waialua's Brief, pp. 45-55. The agriculture exemption is "probably the most far-reaching" in the Act. *Addison* v. *Holly Hill Fruit Products*, 322 U.S. 607, 612. It is a reasonable conclusion from the legislative history that the Fair Labor Standards Act would never have been enacted without this far-reaching exemption. Waialua's Br., pp. 51-52. Congress' repeated refusal since the passage of the law to narrow the agriculture exemption, under proposals referred to in the Employees' Brief (p. 86, note 52), underscores the statutory policy in this respect.[4]

Accordingly, the Court of Appeals below correctly pointed out in *McComb* v. *Hunt Foods*, 167 F. (2d) 905, 908, that while the Act in its general purpose is remedial in character, it is equally remedial in its specific purpose of according broad agricultural exemptions. As stated in this Court's recent unanimous opinion giving effect to a statutory limitation under the Walsh-Healey Act in a suit brought by the United States:

> "It is not for us then to try to avoid the conclusion that Congress did not mean what it said. Arguments of policy are relevant when for example a statute has an hiatus that must be filled or there are ambiguities in the legislative language that must be resolved. But

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[4] In 1949, a few months after the decision of this Court in the *Farmers Irrigation Co.* case, *infra*, pp. 7-9, Congress amended the Act to extend the agriculture exemption to the cooperative irrigation operation held nonexempt in that case (Section 13(a) (6) of Act as amended by Fair Labor Standards Amendments of 1949, 63 Stat. 910, 918).

> when Congress . . . has used language which plainly brings a subject matter into a statute, its word is final —save for questions of constitutional power . . .". *Unexcelled Chemical Corp.* v. *United States,* 345 U.S. 59, 64.

B. The Employees and Secretary Not Only Reject the Plain Statutory Language But Also Completely Ignore the Legislative History of the Exemption.

The Employees and the Secretary urge that the language of the agriculture exemption should not be given its ordinary meaning. But at the same time they construe the exemption without reference to its legislative history. This is underscored by the remarkable fact that their briefs completely ignore the legislative history of the exemption, which history is exhaustively presented in Waialua's Brief, pp. 45-52, 90-96. On every decisive point the legislative history re-enforces Waialua's position and repudiates that of the Employees and the Secretary. *Cf. United States* v. *Universal C.I.T. Corp.,* 344 U.S. 218, 222-224. In particular, it stresses the policy underlying the agriculture exemption and clearly reveals why Congress phrased the exemption in comprehensive language.

C. The Employees and Secretary Reject the Fundamental Analysis of the Agriculture Exemption Made By This Court in the Farmers Irrigation Company Case.

1. The Employees contend that when Waialua, for reasons of efficiency, organized itself into separate departments, it created and became thereby engaged in several separate and distinct enterprises, in addition to farming, including "transportation", "manufacturing", "repair and maintenance", etc., none of which allegedly could properly claim the exemption. Employees' Br., pp. 33-40. For authority they quote a portion of this Court's decision in the *Farmers Irrigation Company* case (Employees' Br., pp. 37-39), to the effect that where activities are separately organized as independent productive activities (which the

Employees assert is the case here), the exemption does not apply. 337 U.S. at 761. The Secretary makes substantially the same contention (Secretary's Br., pp. 23-27).

A reading of the full opinion of the Court in the *Farmers Irrigation Company* case, however, makes it manifest that the Employees and Secretary have misconstrued the meaning of the quotation from the opinion. This Court did not say that activities of a single farmer, which were otherwise exempt, would lose their exemption when organized by the farmer into separate departments, as in the case of Waialua. What this Court said was that many activities, such as manufacturing fertilizer, producing power, and making tools, would not be exempt when organized into separate business entities. 337 U.S. at 768; see Waialua's Br., p. 57.

2. The Secretary contends, however, that the Court regarded the independent incorporation of the irrigation company in the *Farmers Irrigation Company* case as significant only because the irrigation function is so closely connected with planting, growing and harvesting crops that the independent incorporation of the employer was about the only evidence of its separateness, and hence the only basis upon which the exemption could have been disallowed. But in the case at bar, the Secretary contends the activities here in issue are less closely connected with planting, growing and harvesting than irrigating and are separately organized as independent productive functions even though conducted by the same employer, Waialua, and therefore should be held nonexempt. Secretary's Br., pp. 25-26. The Secretary's argument, however, fails to recognize that the statutory definition itself required this Court's decision in the *Farmers Irrigation Company* case to turn upon the question of who performed the irrigation function—the farmer himself or a separate corporate entity. As this Court said,

> "If the Act exempted all such practices [i.e. practices incident to or in conjunction with farming], the com-

pany would be exempt. But the exemption is limited. Such practices are exempt only if they are performed by a farmer or on a farm". (337 U.S. at 766)

And further this Court said:

> "*The controlling fact is that the company has been set up by the farmers as an independent entity to operate an integrated, unitary water supply system.* The function of supplying water has thus been divorced by the farmers from the farming operation and set up as a separate and self-contained activity in which the farmers are forbidden, by the company's by-laws, to interfere. Those employed in that activity are employed by the company, not by the farmers who own the company." [Emphasis supplied]. 337 U.S. at 768.

The fact of independent operation, which this Court's opinion expressly said was "controlling", is rejected in the Secretary's brief.

Furthermore, a major part of the Record refutes the Secretary's assertion that crop irrigation is more closely connected with the production and harvesting of the sugar cane than are cane hauling and cane processing. All the activities of the employees here in issue are an integral part of Waialua's growing of sugar cane and preparing it for market. By no test can spreading water on the cane fields be deemed more closely connected with the production of sugar cane than the hauling of the freshly cut perishable cane from the fields and preparing it for market.

D. The Employees and Secretary Would Deprive Much of the Language in the Agriculture Definition of its Ordinary and Intended Meaning.

1. *"Practices . . . performed by a farmer"*

The Secretary asserts that the *employees* involved here are not "farmers" (Secretary's Br., pp. 26, 33) and hence are not exempt. The term "farmer" appears only in the definition of "agriculture" contained in Section 3(f) and

as there used it is plain that it refers to an employer, and not employees, engaged in conducting the activities listed in the first branch of the definition. See Waialua's Brief, p. 37.

Although the Secretary does not define the term "farmer", it would seem that he means by the term one who works with the soil in the fields (Secretary's Br., pp. 23, 26, 33-34, 36, 37, 38, 39). But an examination of the Act shows that it exempts all employees "employed in agriculture" as the term "agriculture" is defined in Section 3(f), rather than "farmers". And if an employee is "employed in agriculture" as that term is so defined in the Act, he is exempt regardless of whether in common parlance he may be characterized a "farmer". *Cf. Damutz* v. *Pinchbeck*, 158 F. (2d) 882, 883 (C.C.A. 2), *supra*, p. 5. The Secretary's argument amounts to a rejection of the exemption as Congress wrote it and the substitution instead of an exemption, created by the Secretary, for an undefined class of employees, which he styles "farmers".

2. *The exemption is not limited to field activities*

The entire argument of both the Employees and Secretary on the agriculture exemption (Employees' Br., pp. 29-47; Secretary's Br., pp. 22-47) is based upon the unrealistic conception that "agriculture" embraces only activities performed in the *fields* where crops are grown and that "farm hands" or "farm employees" include only those employees working with the soil (Employees' Br., pp. 20, 33-34, 36, 39-42, 45; Secretary's Br., pp. 23, 26, 33-34, 36, 37, 38, 39). Moreover both briefs assume that the exemption does not apply because, allegedly,

> ". . . what the company fails to recognize is that . . . Waialua has elaborate industrial and railroad facilities (R. 721-723) not to be found on the ordinary farm. Some farmers may engage in processing or transportation activities through employees who normally work at tilling the soil, but Waialua performs these functions through a separate organization (R. 633-4, 643)

and employs a large number of specially skilled craftsmen who do no farming at all (R. 790, 802) The differences between the two situations are so great as clearly to require different treatment." Secretary's Br., p. 39; see also Employees' Br., p. 41.

These contentions run counter to the facts of American agricultural life in the twentieth century. In order to achieve lower per unit costs, agricultural activities are being mechanized at an accelerated pace. The average size of farms has been increasing since the turn of the century. Business and scientific methods have long since been introduced. Waialua's Br., pp. 52-54. To obtain greater efficiency, larger-type farms have departmentalized their operations, and have developed specialization in their work forces.[5] Contrary to the position of the Employees and the Secretary, none of these factors detracts from the application of the exemption in the Act, which depends wholly upon whether the activities in question fall within the comprehensive terms of the exemption as carefully defined in Section 3(f).

3. *Waialua is engaged in but one enterprise*

The Secretary asserts that Waialua is engaged in several different enterprises, "separate" and "distinct", only one of which is "farming". Secretary's Br., pp. 25, 26, 27, 37, 38, 39, 40 and 41. It is difficult to see how the Secretary can assert this seriously in view of the Record. As the undisputed facts show (R. 31 *et seq.*), Waialua is a

[5] "The changes that have taken place and are coming make farming a complex business, even on family-operated farms. Young men who look forward to farming as an occupation will need to learn the skills associated with mechanized farming and how to conduct a complex business enterprise. Those who are well adapted for managing a business of this kind are likely to find opportunities in agriculture as good as in any other occupation." See *Science in Farming, Yearbook of Agriculture 1943-1947*, p. 931.

single company, with a single management, engaged on a single plantation containing a single tract of land, and producing a single agricultural commodity.

All the activities of the employees here involved were integrated and coordinated with and an indispensable part of Waialua's operations of producing, cultivating, growing and harvesting sugar cane (R. 33, 35-36, 52, 67, 76, 94) and the District Court (R. 754-755) and the Court of Appeals below (R. 733-734) so found.

The hauling, processing and repair activities of the Employees were no more "separate" and "distinct" from the field activities than "planting" (R. 40-42) was from "cultivation" (R. 42-44) or "irrigation" (R. 45-52) was from "harvesting" (R. 52-59). See also R. 178. It is true that to achieve greater efficiency, the hauling, processing and repair activities were departmentalized in that in general they were performed by different employees than those who performed the field activities and such employees were carried on the payroll and accounting records of Waialua as attached to different departments than the field employees. Waialua's Br., p. 44. But, as above pointed out, such departmentalization does not detract from the application of the exemption in the Act. The question of whether particular employees come within the exemption depends only upon whether they perform activities falling within the exemption as defined in Section 3(f).

And if the Secretary means to say that the activities here in issue are "separate" and "distinct" because geographically they are performed away from the fields, such contention also will not stand up under analysis. The agriculture definition includes, *inter alia*, "harvesting", "preparation for market", "delivery to storage", "delivery . . . to market", and "delivery . . . to carriers for transportation to market", as well as "production, cultivation, growing . . . of . . . agricultural . . . commodities." Patently, many of these activities, such as "preparation for market", "delivery to storage",

"delivery . . . to market" and "delivery . . . to carriers for transportation to market", must take place in geographical areas different from those where "cultivation", "growing", and "harvesting" occur.

4. *"Practices . . . Incident To Or In Conjunction With . . . Farming Operations"*

The Secretary asserts that the agriculture exemption does not apply here because the term "practices", as used in Section 3(f), suggests only activities "ordinarily" or "normally" carried on by farmers with their "ordinary" farming activities. Secretary's Br., pp. 37-38. But this argument cannot be reconciled with the fact that the statutory language itself, in giving examples of exempt "practices", lists "preparation for market, delivery to storage or to market or to carriers for transportation to market"—the very practices in issue here. That is, Congress specifically exempted the activities involved here, namely transportation and preparation for market, when performed by the farmer.

Furthermore the Secretary's argument ignores the fact that at one time in its legislative history, the agriculture exemption was limited to practices "ordinarily" performed by a farmer or on a farm as an incident to farming operations, and that this limitation was expressly stricken from the bill before enactment. Waialua's Br., p. 50. In any event, cane hauling and cane grinding are "ordinarily" performed by Waialua on the cane that it grows, following the usual practice in Hawaii. Waialua's Br., p. 43, note 25; *Bulletin No. 926, United States Department of Labor, "The Economy of Hawaii in 1947"*, p. 45.

5. *"Practices . . . Performed . . . On a Farm"*

The Secretary contends that the Employees do not work "on a farm" because they work in areas "set apart for industrial, railroad, and comparable nonfarming activity" and the "fields on which the sugarcane is grown are

distinct from the areas allotted to the processing plant, the main railroad line, and the repair and maintenance shops." Secretary's Br., p. 36. But the term "farm" has never been confined to those portions of a farm upon which agricultural products actually grow. Thousands of farms have barns, field roads and many other buildings and improvements, on the sites of which agricultural products do not grow. The term "farm" has never been deemed to exclude the location of such barns, field roads and other buildings and improvements. Waialua's Br., pp. 39-40. As the Secretary would construe the term "farm," once employees come out of the growing fields they would no longer be working "on a farm." Thus even if a sugar cane grower used oxen to haul his sugar cane from fields to the mill, once the employees started the oxen out of the fields, they would no longer be working "on a farm". The absurdity of this position carries its own refutation.

Moreover, even if the employees here involved do not work "on a farm", they are still exempt because employed "by a farmer". The Department of Labor has itself recognized in its Interpretative Bulletin No. 14, ¶ 10, that incidental and conjunctive practices, if performed by a farmer, are exempt and in that situation "it makes no difference whether they are performed on or off the farm" (Quoted in Waialua's Br., p. 97; see also pp. 99-100).

6. *Carpenters, electricians, plumbers, etc., can perform "practices . . . incident to or in conjunction with . . . farming operations"*

The Employees and the Secretary also wrongly assume that the exemption does not apply to certain employees because the Record shows that they were working as carpenters, plumbers, welders, electricians, locomotive engineers and repairmen, etc. Employees' Br., pp. 29, 35, 45; Secretary's Br., pp. 23, 33. The exempt or nonexempt status of these employees, however, cannot be determined by viewing their activities in isolation, but only in the light

of the relationship of their work to Waialua's overall activities of growing and processing cane. Viewed in this light, it is clear that whatever words are used to describe the activities of these employees, they perform work falling within the agriculture definition and hence are exempt. Waialua's Br., pp. 40-45.

The Secretary asserts that "the critical significance of the occupations of the *employees*", in determining the applicability of the exemption, is evident from the wording of the exemption, which shows that whether an employee is exempt depends upon whether he is individually employed in "agriculture" and not upon his employer's general business. Secretary's Br., pp. 34-36. Waialua agrees that the agriculture exemption is an individual employee exemption. That proposition standing alone, however, is meaningless. It is necessary to examine the definition of "agriculture" contained in Section 3(f) and if an individual employee performs activities falling within that definition, he is exempt. This is perfectly consistent with the fact that the exemption is an individual employee exemption.

7. *The chain store analogy is not apt*

The chain store analogy offered by the Employees and the Secretary under the retail establishment exemption in the Act (Employees' Br., p. 37; Secretary's Br., p. 27) is not apt because of the wide difference in language of the exemption provisions in Section 13(a)(2) and Section 13(a)(6). The latter, by statutory definition, is much broader. While the Act specifically exempts "any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations", it does not exempt any practice incident to or in conjunction with the *retail* activity. Furthermore, the facts in the two situations are wholly dissimilar. In the chain store case, *Phillips* v. *Walling*, 324 U.S. 490, the employees involved were found to serve predominantly the

economic function of nonexempt wholesaling rather than exempt retailing. The employees here involved, on the other hand, are exclusively employed by a farmer on his farm, and are engaged in activities falling under either the first or second branch of the agriculture definition in Section 3(f). None of the activities of Waialua's employees here involved is nonexempt.

E. Employees Engaged in Connection With Hauling Cane From the Fields to the Mill Plainly Come Within the Agriculture Exemption.

1. The Employees and Secretary argue that the agriculture exemption does not apply to the hauling of cane from the fields to the mill by rail. But both are silent as to the hauling by truck of materials, supplies, equipment and field workers to and from the fields on the plantation (R. 64-66, 235-239, 248-256, 279-283). Yet the District Court also denied exemption to several employees engaged in the latter type of hauling (R. 235-239, 248-256, 279-283), which is as large and important as the railroad hauling, since Waialua operates and maintains 97 trucks and cars to carry on its activities (R. 99). Obviously, the reason for the disparate treatment of the two types of hauling, which is found in the Employees' and Secretary's Briefs, is that hauling by truck on farms is commonplace, while hauling by rail is unusual.

Both Briefs refer to the railroad transportation and facilities as "elaborate" (Employees' Br., p. 41; Secretary's Br., p. 39), notwithstanding that the railroad is a narrow gauge railroad (R. 59), and not a modern railroad facility. This narrow gauge railroad was constructed and operated to fit the special needs of an integrated sugar plantation. The cane cars were only 10 or 11 feet by 6 feet by 5 feet (R. 61) and carloads averaged only 4¾ tons per car gross cane (R. 58). This is to be contrasted with normal sized freight cars which measure 40 feet by 10 feet by 9 feet and if fully loaded would carry an average of 50 tons of cane. See *1946 Car Builders' Cyclopedia of*

American Practice, 17th ed., edited by Roy V. Wright for the Association of American Railroads, pp. 122-123. Furthermore, while the Record shows (R. 59, 205-206) that during the period involved in the suit Waialua used a narrow gauge railroad in cane hauling, it no longer does so. Late in 1952, because it found the railroad costly and inefficient to operate, it substituted trucks to haul all cane from the fields to the mill and completely discontinued the use of the railroad.[6]

The sugar plantations in Hawaii use five different methods of hauling their cane from the fields to the mill: (a) railroads; (b) flumes; (c) tractors; (d) cableways; and (e) trucks. *Bulletin No. 926, U.S. Department of Labor, "The Economy of Hawaii in 1947"*, p. 45. Each plantation uses that method best suited to its needs. The application of the agriculture exemption, as the Court below found (R. 834), does not depend upon such irrelevant consideration as the medium of transportation used. Each year Waialua is required to transport hundreds of thousands of tons of sugar cane from its growing fields to its mill. Waialua should be allowed to use whatever medium of transportation is most efficient, without jeopardizing its exemption.

2. The Secretary asserts, without justification (Secretary's Br., pp. 31-32), that the employees engaged in cane hauling are not engaged in "harvesting" an agricultural commodity within the meaning of the first branch of the "agriculture" definition. The Secretary further errs in saying that Waialua does not undertake "seriously to

[6] See *Waialua Agricultural Co. v. United Sugar Workers, ILWU Local 142 et al.*, 114 F. Supp. 243, 247 (D. Hawaii 1953) and particularly the record in that case, Civil No. 1332, which show that Waialua is now hauling its cane from the fields to the mill by trucks. Moreover, the trend among all Hawaiian plantations is to substitute trucks for railroads in hauling cane. See *Bulletin No. 926, U. S. Department of Labor, "The Economy of Hawaii in 1947"*, p. 45.

support" the aspect of the Ninth Circuit's opinion to the effect that these employees were engaged in "harvesting". *Id.* The fact is that the Employees, while engaged in hauling cane from the fields to the mill, and whether on the portable tracks or on the permanent tracks, came within the term "harvesting" contained in the statutory definition. Waialua's Br., p. 42, note 23. The dictionary definition of the term "harvesting" is "to gather in a crop". *Id.* The Department of Labor's own bulletin No. 14 states in ¶ 5(a) that "harvesting" includes such hauling activities. Waialua's Br., p. 97.

3. The Secretary, in commenting on *Vives* v. *Serralles*, 145 F. (2d) 552 (Secretary's Br., pp. 29-31), discussed in Waialua's Brief, p. 59, is unmindful of the fact that the case, as shown in the opinion, involved two groups of transportation employees, both of which were held exempt under Section 13(a)(6). The second group worked on the farm where the mill was located and hauled the cane from the fields on the farm to the mill on the farm. The First Circuit referred in its opinion to the testimony of an employee in group two, a tractor operator, and said that employees in that group

> "'worked in the transportation of sugar cane', hauling cars to the central [the mill] where the plaintiffs would weigh them and then place them under the crane and . . . the crane operator [at the mill] would then 'lift up the bunch of cane and drop the cane on the conveyor'". 145 F. (2d) at 554.

Further referring to his testimony the Court said that "his testimony on behalf of the ox teamsters was to the same effect". *Id.*

Since the Court held the second group of employees exempt, as well as the first group, the Secretary errs in stating without qualification (Secretary's Br., p. 31) that in the *Vives* case the Court fixed the point at which the portable tracks met the permanent tracks as the dividing line between activities exempt under Section 13(a)(6), and

activities not so exempt. Insofar as the second group of employees was concerned, such point did not in the Court's opinion mark the end of the harvesting operation; instead, the harvesting operation continued up to the very point of the mill. The *Vives* case, therefore, clearly supports Waialua's contentions herein.[7]

4. The Secretary emphasizes (Secretary's Br., p. 31) as the main reason for the court's alleged holding in the *Vives* case the fact that the wages of laborers in the field performing operations up to the "concentration point" were regulated by the Secretary of Agriculture under the Sugar Act of 1937 (50 Stat. 903; 7 U.S.C. §§ 1100, *et seq.*). The need for a clear dividing line between the coverage of the two acts, the Secretary adds, suggested the concentration point as an appropriate point of cleavage.

The wage determinations of the Secretary of Agriculture under the Sugar Act are not relevant. Nor has the Department of Labor ever considered them relevant in interpreting the "agriculture" exemption in the Fair Labor Standards Act. Such Sugar Act wage determinations were made under a statute which authorizes wage determinations only for employees engaged in "production, cultivation, or harvesting". While the quoted words appear also in the definition of "agriculture" in the Fair Labor Standards Act, they form but a small part of such definition. See *Damutz* v. *Pinchbeck*, 158 F. (2d) 882, 883 (C.C.A. 2).

[7] The Secretary's Brief errs in another respect also with respect to the *Vives* case. It asserts (Secretary's Br., p. 30) that that case states that employees "engaged in the operation, repair, and maintenance of the company railroad", after "concentration", are not within the agriculture exemption. This statement is erroneous. The *Vives* case did not involve any employee engaged in the "repair and maintenance" of a railroad. What the Secretary has done is lift from context the Court's statement in the *Vives* case that the *Calaf* case (127 F. (2d) 934) involved "repair and maintenance" employees, as well as employees operating the employer's railroad.

In any event, with respect to Hawaii, the Secretary of Agriculture has construed the term "harvesting" in the Sugar Act as *including* main line hauling, because for years he has fixed the wages of employees engaged in such hauling under the Sugar Act. For example, in the wage determinations for 1941, 1942, 1943 and 1944, the Secretary of Agriculture (or the War Food Administrator) fixed wages for the following classes of employees, among others, in Hawaii: railroad brakemen, railroad engineers, railroad firemen and conductors. *Code of Federal Regulations*, Title 7, Ch. VIII, Pt. 802, § 802.34d (6 Fed. Reg. 611) (1941); § 802.34e (7 Fed. Reg. 3053) (1942); § 802.34f (8 Fed. Reg. 8780) (1943); § 802.34g (9 Fed. Reg. 869) (1944).[8] All these employees were engaged in main line transportation (R. 62-63, 205-206).

F. Other Erroneous Arguments By the Employees and Secretary Respecting Employees Engaged in Connection With Processing Cane.

1. The Employees cite *Bowie* v. *Gonzalez*, 117 F. (2d) 11 (C.C.A. 1) (Br., pp. 46-47) for the proposition that the agriculture exemption does not apply to the employees engaged in connection with sugar cane processing, because such employees are exempt under Section 7(c). (The Sec-

[8] Since 1945 the wage determinations for Hawaii of the Secretary of Agriculture have not specified the particular occupations to which the determinations applied. Each one has merely stated that the determination applied to employees engaged in "production, cultivation, or harvesting" of sugar cane, the activities specified in the Sugar Act as those for which the Secretary is to determine fair and reasonable wage rates (Section 301(b) of Sugar Act of 1937, 50 Stat. 909, 7 U.S.C., Sec. 1131; Section 301(c) (1) of Sugar Act of 1948, 61 Stat. 929, 7 U.S.C. Section 1131). Such determinations are published in the Federal Register as follows: 10 Fed. Reg. 2281 (1945); 11 Fed. Reg. 2149 (1946); 12 Fed. Reg. 3311 (1947); 13 Fed. Reg. 212 (1948); 14 Fed. Reg. 218 (1949); 15 Fed. Reg. 653 (1950); 16 Fed. Reg. 114 (1951); 17 Fed. Reg. 5322 (1952); 17 Fed. Reg. 11711 (1953); 19 Fed. Reg. 2977 (1954).

retary makes the same argument, but without reference to the *Bowie* case (Secretary's Br., p. 19)). The *Bowie* case involved an independent sugar cane processor, that is, a processor who processed not only the cane he grew himself but also cane grown by others. See *Farmers Irrigation Co.* v. *McComb*, 337 U.S. 755, 766, note 15. If such sugar cane processing by the independent processor was held to come within the agriculture exemption, the processing exemption in Section 7(c) would have served no purpose in the Act. That was all the Court said in the *Bowie* case. The *Bowie* case did not by any means hold or even imply that the agriculture exemption, which has a broader and entirely different purpose, does not exempt the processing done by a farmer of his own cane alone. *Cf. International Longshoremen's & Warehousemen's Union* v. *Juneau Spruce Corp.*, 342 U.S. 237, 244.

2. The Employees' Brief (p. 36) errs in comparing Waialua's processing operations to those of a hypothetical cotton farmer, who manufactures cotton cloth on his farm. Sugar cane has no market until it has been processed into raw sugar and it never moves into interstate commerce until so processed (R. 33). Thus it is not prepared "for market" until converted into raw sugar. Cotton on the other hand is prepared "for market" as soon as it is ginned and baled, because it is marketed by the farmer in that form and long before it has been converted into cloth or any other manufactured product. The processing of sugar cane into raw sugar represents the first and only process upon the sugar cane, such process being necessary to convert it into a non-perishable commodity suitably prepared "for market". The making of cloth from raw cotton, however, requires at least three processes: (a) ginning the raw cotton and baling the ginned cotton; (b) spinning the cotton into thread or yarn; and (c) weaving the thread or yarn into cloth. It may well be doubted that a practice is incident to or in conjunction with a farming operation, when it is as far removed from the growing of the product

as the making of cloth is from the ginning of the cotton. But the processing of cane into raw sugar is not similarly removed from the growing of the cane since, as the undisputed facts show, such processing must take place within a few hours after the cane is grown (R. 33, 731) and is therefore an integral part of the sugar cane growing.

Moreover, as the legislative history shows, Congress was fully aware of the fact that it was the practice of some farmers to process their own cane into sugar. Waialua's Br., p. 48.[9] There was no similar record made in the legislative history to show that a farmer ever processed and reprocessed his cotton crops into cloth. Hence the analogy of cloth-making by a cotton farmer, which the Employees seek to inject into the case, is purely hypothetical.

3. The Court of Appeals below concluded that all employees working in connection with the processing of sugar cane into raw sugar or molasses were within the agri-

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[9] As the Court below said in the earlier appeal herein (R. 830-831):

"But the raising and harvesting of sugar were specifically given consideration by Congress on account of the immense importance to the economy of this country as a whole. The text of the Act itself, the debates over the meaning of provisions, and especially the broad phrasing of the exclusions, indicates the intention that construction should be evenly balanced and not technical. The text reflects the feeling that, in troublesome times, the need for sugar may momentarily become vital. As to sugar, the all-year processing exclusion, in addition to the broad agricultural exclusion, indicates strongly congressional intent. Not only was it the desire to exempt processing as a part of the harvesting done by a farmer or on a farm, but also processing done by a third party. These provisions are not alternative or mutually exclusive, and should be liberally construed for the reasons given by this Court in *McComb* v. *Hunt Foods, Inc.*, 9 Cir., 167 F. (2d) 905, 908. It must be remembered that the construction given to this Act by the Court as to Hawaii, although not conclusive, will be generally applied to wheat farms and sugar plantations in continental United States.

culture exemption. The District Court, on the other hand, held that none of such employees was within such exemption (R. 736). The District Court did, however, grant a limited exemption during the cane grinding season under Section 7(c) to some of such employees, namely those working within the mill building and engaged in operating machinery to convert the sugar cane into raw sugar or molasses (R. 213, 310-317, 796-798) or bagging, loading and shipping the raw sugar or molasses (R. 317-318, 796, 798). The District Court did not hold the employees exempt under Section 7(c) when they were engaged in (a) repairing, maintaining and servicing the mill and its equipment, whether during the grinding or off seasons (R. 800-804)[10] or (b) handling bagasse (i.e., the residue of the cane left after grinding) or performing any operations in the fire room and power plant of the mill in order to generate steam and power required for the processing operations (R. 798).[11] The District Court's limitation of the Section 7(c) exemption to only some of these employees for a part of the year presents for consideration by this Court the application to all such employees of the agriculture exemption in Section 13(a)(6) of the Act.

[10] A limited exception to this was that the District Court held the employees exempt under Section 7(c) when they were engaged in cleaning and repairing the mill during the weekend shutdown (R. 798-800).

[11] Power was supplied at the same time and in the same workweeks for field and mill uses and also for uses that were not in commerce (R. 218-220, 762). The employees engaged in such power operations were thus in the same workweeks performing work not covered by the Act at all and work exempt under either Section 13(a)(6) or Section 7(c). In that situation they were clearly excluded from the overtime provisions of the Act in such workweeks. Waialua's Br., p. 82, footnote 50. The matter of commingled work is more fully discussed *infra*, pp. 41-42.

G. The Cases Arising in Puerto Rico, Upon Which the Employees and Secretary Rely, Are Clearly Distinguishable or Support Waialua's Contentions.

As shown in Waialua's Br., p. 58, *Bowie* v. *Gonzalez*, 117 F. (2d) 11 and 123 F. (2d) 387 and *Calaf* v. *Gonzalez*, 127 F. (2d) 934 involved a factual situation completely different from that involved here. Those cases involved employees who were transporting and processing sugar cane grown by several different farmers on several different farms, including both farms of their employer and also farms of independent growers. Here, however, there is only one farmer and one farm and the only cane transported and processed is grown by the farmer on that farm, and all transportation and processing are likewise confined to that farm.

The First Circuit itself emphasized in the *Calaf* case that the activities of "farmers preparing their goods for market or sending their goods to market, or to storage, or to carriers to transport from farms to market . . . are clearly exempt" and that in the case before the Court, the exemption would apply "if the evidence disclosed that the heart of the transportation system and the situs of the employment of the workers were located at the farm". 127 F. (2d) at 937-938. And when the same Court later had such a case presented to it, as in the *Vives* case, 145 F. (2d) 552, it held the employees exempt under Section 13(a)(6). *Supra*, pp. 18-19. So here, where all the activities of the employees in issue take place on the single farm of the employer and constitute practices incident to and in conjunction with Waialua's growing operations, all such activities fall within the exemption.

H. The Interpretations Announced in the Secretary's Brief As to Employees (i) Hauling Sugar Cane, (ii) Processing Sugar Cane, and (iii) Repairing and Maintaining Field Implements and Hauling and Processing Equipment and Facilities, Represent a Reversal of the Secretary's Previous Interpretations and Enforcement Policies.

The Secretary's views in any case must be evaluated in the light of certain settled principles. Under the statutory scheme, the "courts must apply the statute to this situation without the benefit of binding interpretation within the scope of the Act by an administrative agency." See *Bay Ridge Co.* v. *Aaron*, 334 U.S. 446, 461. The Act clearly "puts upon the courts the independent responsibility of applying *ad hoc*" the terms of the statute. *Kirschbaum* v. *Walling*, 316 U.S. 517, 523. The weight to be given an administrative interpretation "will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140. Such interpretations are persuasive, for example, where they represent the "contemporaneous construction of [the] statute by the men charged with the responsibility of setting its machinery in motion; of making the parts work efficiently and smoothly while they are yet untried and new." *United States* v. *American Trucking Associations, Inc.*, 310 U.S. 534, 549. On the other hand, they are not so persuasive where they seek to overturn long established administrative interpretations made soon after the Act went into effect and consistently followed. *Miller Hatcheries* v. *Boger*, 131 F. (2d) 283 (C.C.A. 8).

With these principles in mind, we now consider *seriatim* the Department of Labor's interpretations with respect to the activities here in issue.

1. *Hauling of sugar cane from the fields to the mill.*

a. In Interpretative Bulletin No. 14, paragraph 10(f), issued in 1939, the Department of Labor announced:

> "If a company has sugar cane fields and also a mill, the transportation of its own sugar cane to the mill seems an incidental practice which is included in this term" [i.e. "practices . . . performed by a farmer . . . as an incident to or in conjunction with such farming operations"]. Waialua's Br., pp. 62, 99.

Such position has never been publicly changed by a republication of the bulletin or by a press release or by any other means bringing the change to the attention of employers, employees and the public generally. *And, significantly, neither before this action was started in 1947 nor at any time since, has the Secretary sought to enforce any different rule in Hawaii.* The plantations generally, including Waialua, have always treated all employees engaged in hauling sugar cane from the fields to the mill as exempt under Section 13(a)(6), and until the Department of Labor filed its first *amicus* brief in the instant litigation in the Court of Appeals, the Department had never even as much as hinted that the plantations were violating the Act.

b. The Secretary seeks to show that the Department had in fact changed its interpretation on sugar cane hauling after the *Calaf* decision (127 F. (2d) 934 (C.C.A. 1)) by referring to two documents (Secretary's Br., pp. 42-43): (i) the Department's findings and opinion, dated May 20, 1943, published incident to its approval of a wage order for the Sugar and Related Products Industry; (ii) a letter dated November 26, 1942, written by William B. Grogan, acting for the Administrator, to Mr. Paul Guillot of Paincourtville, Louisiana. Neither of these documents in fact represented any change in the position taken in ¶10(f) of Interpretative Bulletin No. 14.

We have set forth in the Appendix herein, pp. 51-52, *infra*, the pertinent part of the text of the Department's findings and opinion of May 20, 1943. As shown therein the Department affirmed ¶¶1-13 of Interpretative Bulletin No. 14 *in toto*, and that includes ¶19(f). Its statement that whether employees engaged in transporting sugar cane

from a farm to a mill are to be regarded as employed in agriculture "is a question of fact to be determined upon the basis of all the evidence and the applicable rules of law", is hardly the equivalent of the adoption by it of the principle of law which the Department alleges was laid down in the *Calaf* case. See also the Appendix herein, pp. 52-56, *infra*, where we set forth excerpts from the Informal Hearing and Meeting of Industry Committee No. 50 for the Sugar and Related Products Industry held January 5, 1943. Such excerpts contain the discussions pertaining to the application of the "agriculture" exemption to cane transportation, which preceded the issuance of the wage order. They too show a reaffirmation by the Department of Interpretative Bulletin No. 14, including ¶10(f) thereof.

The letter to Mr. Guillot was in response to one addressed by Mr. Guillot to the Department under date of September 29, 1942. The full exchange of correspondence is set forth in the Appendix herein, pp. 56-60, *infra*. Mr. Guillot raised a question about sugar cane transportation and processing operations in Louisiana, where, *as his letter shows, the mill operators do not transport simply the cane they grow themselves but also transport cane grown by other farmers* which is processed at the mill. Moreover, since the letter in answer to Mr. Guillot was dated November 26, 1942, and preceded the Department's findings and opinion of May 20, 1943 (which reaffirmed ¶¶1-13 of Interpretative Bulletin No. 14), nothing said in that letter can be taken to detract from the Department's subsequent reaffirmation of such paragraphs. But if the letter does represent a change in the position asserted in ¶10(f) of the Bulletin, the subsequent shift back to ¶10(f), as revealed by the findings and opinion of May 20, 1943, shows that the Department's final position was that stated in the Bulletin.

c. The interpretations, which the Secretary seeks to apply here, are not, as we have seen, the initial interpretations made soon after the Act went into effect and consistently followed, but rather some newly devised interpretations

contrived to defeat Waialua's position under the circumstances herein. See cases cited *supra*, p. 25; see also pp. 29-30, *infra*.

The Secretary, citing *Dairymen's League Coop. Ass'n.* v. *Brannan*, 173 F. (2d) 57 (C.C.A. 2) (Secretary's Br., p. 45), argues that the Department's second thought is better than its first and hence should be followed. This, however, would lead to the dangerous precedent that the Department's third thought may be better than its second and so on. If the courts should then give weight to the Department's latest interpretation, whether it be the first, second, third, fourth, etc. interpretation, the resulting instability is obvious. *Cf. Ramspeck* v. *Trial Examiners Conference*, 345 U.S. 128, 143 note 9. The truth is that, encouraged by the District Court's decision herein, the Secretary is seeking to alter his interpretations radically and to gain judicial justification therefor, contrary to this Court's holding in *Walling* v. *Halliburton Co.*, 331 U.S. 17, 25-26. In that case this Court declined to depart from a decision rendered under the Act five years before, pointing out that employers had regulated their affairs on the faith of the earlier decision.

2. *Processing of sugar cane.*

Paragraph 10(b) of the Administrator's Interpretative Bulletin No. 14 dealt with the term "preparation for market" appearing in Section 3(f) as an example of the type practices incident to or in conjunction with farming operations which are embraced by the definition of "agriculture." It stated in part that the term "preparation for market" included the manufacturing of raw sugar when performed by a farmer. Waialua's Br., pp. 62, 97, 98. Such interpretation was entitled to weight, since it represented "contemporaneous construction" of a new statute. *United States* v. *American Trucking Associations, Inc.*, 310 U.S. 534, 549. See also *Miller Hatcheries* v. *Boyer*, 131 F. (2d) 283 (C.C.A. 8).

Following the decision in *Bowie* v. *Gonzalez*, 117 F. (2d) 11, however, the Department in September, 1941, issued a press release (WHM 35:355, Editor's Note) stating that, in the light of that decision, it was of the view that, contrary to the position taken in Interpretative Bulletin No. 14, the agricultural exemption does not apply to sugar mill employees even though the only cane they grind is that grown by the sugar mill owner in his own fields. The *Bowie* case, of course, stands for no such proposition, since the facts were that the mill ground not only cane which it grew but also a substantial amount of cane grown by a large number of growers who were wholly independent of the mill owner. *Such change of opinion by the Department, moreover, was inconsistent with the language of the exemption provision, its legislative history, the case law, and with the continued exemption of processing of other commodities such as fruit packing and canning, canning dairy products, cotton ginning and tobacco stemming, which are equally industrialized* Waialua's Br., p. 62.

The modified views issued by the Department of Labor, and relied upon by the Employees (Employees' Br., p. 43) and the Secretary of Labor (Secretary's Br., pp. 41-45), are simply a deliberate effort on the part of the Department to extend the holdings of the First Circuit concerning wholly distinguishable operations on Puerto Rican plantations. They were not adopted because of any administrative experience, discretion, or conclusion as to operations on or comparable to Hawaiian plantations. The best indication of this is the Secretary's statement (Secretary's Br., p. 4) that "the Department had nothing whatsoever to do with the institution of either the original action or the counterclaim, and it did not participate at all in either of the trial court proceedings." If the administrative interpretation had really changed years before this suit was filed, as argued in the Secretary's Brief (pp. 41-44), it is strange that the Secretary never sought to enforce against Hawaiian plantations the interpretations which he now

presses (Waialua's Br., pp. 63-64), and did not originate or join or otherwise participate actively over an eight year period in this litigation which the Secretary's Brief (p. 4) concedes to be so decisive.

3. *Repair and maintenance activities.*

Under the Secretary's present argument the agriculture exemption would be denied to employees engaged in repairing, maintaining and servicing (i) field implements, such as tractors and caneloading machines (R. 231-235, 239-243, 273-276), (ii) hauling equipment and facilities, including trucks (R. 220-223), field roads (R. 279-283) and the narrow gauge railroad (R. 206-212), and (iii) the cane processing machinery (Waialua's Br., pp. 87-88). Yet paragraph 12 of the Department's Bulletin No. 14 stated:

> "We have received inquiries concerning office help—secretaries, clerks, bookkeepers, etc.—night watchmen, maintenance workers, engineers, etc., who are employed by a farmer or on a farm in connection with the activities described in the definition of 'agriculture' contained in Sec. 3(f). In our opinion such employees are exempt." Waialua's Br., p. 100.

It will be noted that the type of employees, mentioned by the Department as exempt, are employees who would be employed only by the largest farms. If, under the Department's interpretation such employees are exempt as being employed "in connection with" the activities described in the statutory definition of agriculture, then surely the employees engaged in the repair and maintenance activities here in question, which are indispensable parts of Waialua's farming operations, were likewise exempt.

The Department's interpretations, above set forth, issued in 1939, have never been modified and have remained outstanding until the present time, and the Department has never enforced any other rule in Hawaii. In this action, for the first time, the Secretary announces that the

agriculture exemption does not apply to these activities. This belated change of view by the Secretary should not be accorded any weight by this Court.

I. There is No Basis for the Employees' Argument (Br., p. 87) That the Opinion Below Would Give Hawaiian Sugar Plantations "An Unfair Advantage" Over Competitors in Puerto Rico and the Mainland.

The provisions of the Act apply equally to plantations on the mainland, in Puerto Rico, and in Hawaii, under the definition in Section 3(c). Waialua is not arguing for an interpretation of the Act which would apply its exemptions to Hawaiian plantations in a discriminatory manner. Any producer on the mainland or elsewhere, who processes his own cane alone into raw sugar, and is therefore in the same position as Waialua, should enjoy the exemption under Sections 13(a)(6) and 3(f).

Furthermore, no question of minimum wages is presented herein, since Waialua's employees receive hourly wages substantially above those required by the Act. The only issue herein concerns payment of overtime compensation to certain groups of employees. As regards Waialua's employees, who are exempt from overtime requirements under both Sections 13(a)(6) and 7(c), processors on the mainland and in Puerto Rico enjoy the same exemption from overtime requirements under Section 7(c), even if they are not farmers within the meaning of Section 13 (a) (6).

The Employees' argument confuses equal application of the Act under equal circumstances with competitive disparities which are wholly outside the ambit of the Act. In that connection, however, it is the Employees who would read into the Act limitations on agricultural methods and organization that would undermine the economic progress of producers and employees alike. The Department of Agriculture has recognized that mechanization is the key

to high productivity, sound competition, and improved labor conditions in sugar cane production.[12]

II. THE EMPLOYEES WERE ALSO EXEMPT FROM THE OVERTIME PROVISIONS OF THE ACT UNDER SECTION 7(c) WHEN ENGAGED IN THE ACTIVITIES IN ISSUE.

Since the Court of Appeals concluded that each employee was totally exempt from the Act under the agriculture exemption in Section 13(a)(6) in each workweek in issue (Waialua's Br., p. 15), the Court did not deem it necessary to consider the processing exemption under Section 7(c) (R. 746, note 45).

The District Court, for its part, did pass upon Section 7(c), holding exempt thereunder only the employees who worked in the mill building and who were (a) operating machinery which ground sugar cane into raw sugar or molasses, (b) cleaning or repairing such machinery within the mill building proper during the weekend shutdown, or (c) bagging, loading and shipping such raw sugar and molasses (R. 213, 310-318, 796-800). Waialua contends however that the Employees were aso exempt under Section 7(c) when engaged in any of the following:

1. Repair, maintenance and servicing of the mill and its equipment, whether performed in the mill building or in

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[12] See *The Marketing of Sugar Cane in Puerto Rico* (U.S. Department of Agriculture, 1950), p. 43:

> "It is felt that serious consideration should be given by the members of the industry to the following suggestions: . . . (6) That to continue to make a maximum contribution to the welfare of the economy, the sugar industry of Puerto Rico eventually must at least mechanize production operations to the extent necessary to maintain a competitive position with other areas in the market in which it sells sugar."

See also *Economics of Sugar Beet Mechanization in California* (U.S. Department of Agriculture, 1952), pp. 4, 10-12; *Science in Farming, Yearbook of Agriculture 1943-1947*, pp. 921-932.

the adjoining service shops, and whether performed during the grinding or off seasons;

2. The burning and disposal of bagasse in the fire room of the mill and generation of the power in the power plant of the mill needed in the grinding of the sugar cane;

3. The hauling of sugar cane produced by Waialua from the fields to the mill and repair, maintenance and servicing of equipment and facilities used in such hauling; and

4. Such other incidental operations as were necessary and indispensable to the foregoing.

We agree with the Secretary that the Section 7(c) exemption requires the showing that (a) the *employer*[13] is engaged "in the processing of . . . sugar cane . . . into sugar (but not refined sugar) or into syrup" and that (b) the work of the *employees* takes place in the "place of employment" where their employer is "engaged . . . in the processing of . . . sugar cane". We submit that both factore were present here and hence the employees were exempt under Section 7(c) when engaged in the activities here in issue.[14] See Waialua's Brief, pp. 65-72.

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[13] The Secretary at one point in his brief incorrectly quotes the exemption as requiring an "employ*ee*" rather than the "employ*er*" to be engaged in the processing of sugar cane (Secretary's Br., p. 47).

[14] Contrary to the Secretary's statement (Secretary's Br., p. 49), nowhere does Waialua contend that the "place of employment" in the instant case was the entire plantation. Waialua contends simply that the "place of employment" embraced not only the mill building but also all other areas on the plantation where operations necessary and indispensable to cane processing were carried on. See Waialua's Brief, pp. 66-67.

A. The Service Shops Employees Were Performing Activities Which Were an Integral Part of Waialua's Single Enterprise of Growing and Processing Sugar Cane.

1. The fundamental fallacy in the Employees' argument with respect to the employees attached to the service shops is their insistence that because such employees were departmentalized and more or less specialized in doing only repair work, they were necessarily engaged in an enterprise separate from Waialua's growing and processing operations (Employees' Br., pp. 52-54). Merely because Waialua's employees might have been assigned to simply one activity or one group of activities, as, for example, the hauling of cane to the mill or the grinding of cane in the mill or the repair of the tools and equipment used in the growing, hauling and processing operations, it does not follow that they were thereby engaged in separate enterprises. *Supra*, pp. 7-12. All of these activities were simply an integral part of Waialua's single enterprise of growing and processing sugar cane. As the District Court found:

> "Both field and mill operations necessitate the equipping and maintaining of complete service shops for prompt minor repairs and emergency work and major overhaul" (R. 763).

And as the parties stipulated:

> "Machinery breakdowns in the mill may result in a shutdown of the entire mill which, in turn, necessitates a discontinuance of harvesting and transportation operations until mill repairs are complete. Breakdown of harvesting machinery or of cane transportation facilities in turn may result in a shutdown of the entire mill (R. 94). . . . In case of equipment failures [in the mill], the engine tenders, assisted by other crew members, perform repair work under the direction of the shift engineers. Employees in the welding shop, machine shop and blacksmith shop, however, are called upon to do most of the repair work requiring welding or machining. All repair work required during processing operations to restart equipment must

> be handled immediately to avoid serious sugar losses in burned and harvested cane and in cane and cane juices being processed and to avoid costly mill cleaning operations" (R. 76).

In the light of these facts it is sheer fantasy for the Employees' Brief to describe Waialua's repair shops as a "separate" enterprise. All the work performed by the employees in such repair shops related either to Waialua's field or processing operations or to its mill village operations which were too remote from "commerce" to be covered by the Act at all. Waialua's Br., pp. 73 *et seq.*

2. The Employees contend that if employees of an independent machine repair shop performed the activities here involved, they would not be exempt from the Act, and therefore the fact that the work is done by Waialua itself —the single owner of the entire plantation operation—affords no basis for applying the exemption (Employees' Br., p. 54, note 27). The Employees' premise is erroneous. If repair work is done for a farmer upon a farmer's machinery and equipment by an independent machine repair shop, or if trucks are repaired by an independent garage or automobile dealer, such work is exempt from the wage and overtime provisions of the Act under the retail and service establishment exemption provided by Section 13 (a)(2). The Department of Labor has ruled that that exemption applies to the independent farm implement dealer and the independently-owned farm equipment repair shop. See Title 29, Code of Fed. Regs., Ch. V, Part 779 (15 Fed. Reg. 7245) Sec. 779.9(b); 3 CCH Labor Law Reporter, § 24,105.09(b).

B. The Section 7(c) Exemption for the Processing of Sugar Cane is Not a Seasonal Exemption as Contended By the Employees.

The Employees' assertion that the purpose of Section 7(c) is to grant seasonal exemptions (Employees' Br., pp. 50-51) confuses Section 7(c) with Section 7(b)(3) of the

Act, which grants a limited 14 workweeks exemption per year from overtime requirements to industries "found by the Administrator to be of a seasonal nature" and is therefore the section of the Act relating to seasonal exemptions.

It is true that certain of the exemptions in Section 7(c) are also limited to 14 workweeks per year and hence may also be considered seasonal exemptions. But this is not true as to the processing of sugar cane, which is specifically granted a year-round exemption under Section 7(c),[15] along with the first processing of milk, etc., into dairy products, the ginning and compressing of cotton, and the processing of cottonseed. Such exemptions are wholly unrelated to seasonality. The decisions, therefore, relating to the 14 workweeks exemptions in Section 7(c), such as the exemption for handling, slaughtering and dressing poultry or livestock, have no application here.

The legislative history of the Act also shows that seasonality of operations played no part in the enactment of the year-round exemptions in Section 7(c). Rather Congress was concerned with avoiding the imposition of additional costs upon the farmer, which the processor would pass back to him if the overtime requirements of the Act were thrust upon the processor. Waialua's Br., pp. 54-55.

C. The Interpretations of Section 7(c) Sought in the Secretary's Brief Constitute a Sharp Departure From Administrative Interpretations Originally Announced and Long Followed.

The Secretary of Labor is seeking a formalistic or hypertechnical interpretation of Section 7(c). A close examination of the Secretary's argument shows that he would limit the sugar cane processing exemption to the employees

[15] In view of the fact that the Section 7(c) exemption for the processing of sugar cane is a year-around exemption without limitation, the District Court erred in denying the exemption to the employees when performing repair and reconditioning work on the mill and its equipment while the mill was shut down for the off season (R. 800-801).

working in the building where the sugar cane grinding takes place. Secretary's Br., pp. 48-50. He would deny the exemption to employees performing activities which are necessary to the processing, if such activities are not performed in the mill building where the "actual" grinding of the sugar cane occurs (*Id.*, p. 49). Necessarily, then, he would deny the exemption to employees who keep the mill in repair but do the repair work in adjoining service shops and to employees who transport the cane from the fields to the mill.

The Section 7(c) interpretations which the Secretary now seeks are completely novel and contrary to the positions which the Department of Labor has taken from the beginning under the Act. Thus, as to the transportation of sugar cane from the fields to the mill, the Department ruled in paragraph 22 of Interpretative Bulletin No. 14, which was released in 1939, that

> ". . . truck drivers who carry raw materials to the establishment or who transport goods upon which the exempt operation has been performed may be considered as working in the 'place of employment' . . . " Waialua's Br., p. 71.

The Department has also ruled that employees of a sugar mill engaged in transporting the raw sugar to a warehouse seven miles removed from the mill are exempt. WHM 35:769. See also the additional interpretations of the Department set forth in Waialua's Brief, pp. 70-72, 102-103. None of these interpretations has ever been modified or revoked. It is obvious, therefore, that the Department has frequently regarded employees as working in the place of employment within the meaning of Section 7(c) even though they worked in places many miles away from the place where the sugar cane grinding, fresh fruit canning, etc., occurred. Moreover, this is the basis upon which the Secretary has always enforced the law with respect to Hawaiian sugar plantations and is enforcing it today.

D. The Puerto Rico Cases Support Waialua's Contention as to Section 7(c).

The Secretary denies (Secretary's Br., p. 51, note 9) that these cases (*Bowie* v. *Gonzalez*, 117 F.(2d) 11, and *Calaf* v. *Gonzalez*, 127 F.(2d) 934) assumed that cane transportation was exempt under Section 7(c). He does not deny, but in fact admits, however, (Br., pp. 28, 29) that in those cases transportation was held "incident to milling." And in the *Calaf* case, *supra*, the facts were that the transportation employees there involved worked over forty hours during a week, did not receive any overtime compensation, and neither sought nor were allowed any overtime recovery.[16] These facts, we submit, warrant the conclusion that the First Circuit *did assume* that the Section 7(c) exemption was applicable to cane transportation employees.

The Secretary takes inconsistent positions. The Secretary urges (Br., pp. 28-29), as do the Employees (Br., pp. 44, 45), that the agriculture exemption does not extend to cane hauling performed by the employees because the Puerto Rico cases held that hauling was incident to milling rather than to farming. On the other hand, they disagree with Waialua's contention that the Section 7(c) exemption extends to such cane hauling because it is incident to milling.

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[16] While the District Court wrote no opinion in the *Calaf* case and these facts do not appear in the appellate court's opinion, we have, nevertheless, obtained such facts from an examination of all the pleadings and related papers in the file in the case available in the United States Department of Labor. The Secretary is mistaken, therefore, in stating (Secretary's Br., p. 51, note 9) that there is nothing to indicate whether the employees in the *Calaf* case worked any overtime hours or sued for overtime compensation. The *Calaf* case did not involve any 7(c) issue, or any overtime compensation issue whatever. The issues in the *Calaf* case were minimum wage issues which arose under the agriculture exemption. A similar situation existed in the *Bowie* case.

E. The Principal Cases Relied Upon By the Employees and the Secretary are Wholly Distinguishable.

The Secretary and Employees rely principally upon *Walling* v. *Bridgeman-Russell Co.*, 6 Labor Cases, ¶ 61,422 (D. Minn.); *Shain* v. *Armour*, 50 F. Supp. 907 (W.D. Ky.); and *Fleming* v. *Swift*, 41 F. Supp. 825 (N.D. Ill.) (Secretary's Brief, pp. 50, 54-55; Employees' Br., pp. 51-52, 55). Such cases are not in point. None of these cases holds that employees engaged in repair or maintenance work or in generating steam and power for exempt operations of their employer are not themselves exempt. They hold only that the Section 7(*e*) exemption does not apply to repair and maintenance employees, etc., who perform work for both exempt and nonexempt operations of their employer. For example, in the *Bridgeman-Russell* case, *supra*, certain employees were producing steam and power for the making of butter—an exempt process under Section 7(e)—and also for the making of ice cream and ice cream mix, which were not exempt under Section 7(e). But in the case at bar the repair and maintenance work and the work of generating steam and power are in no way related to any nonexempt operations of Waialua; rather they are simply integral parts of Waialua's sugar cane processing operation. Accordingly the employees engaged in such work fall within the Section 7(*e*) exemption.

F. The Section 7(c) Exemption Applies to the Employees Engaged in the Burning of Bagasse and Generation of Power in the Fire Room and Power Plant of Waialua's Mill.

As recognized by the Employees (Employees' Br., p. 54) and the Secretary (Secretary's Br., p. 53), the employees engaged in the fire room and power plant operations fall within the language of Section 7(e), even as narrowly construed by them, because such employees worked in the mill building proper, i.e., the fire room and power plant of such building (R. 723), the place where the employer was "engaged . . . in the processing of . . . sugar cane." But the

Employees and the Secretary nonetheless argue that the District Court was correct in denying the exemption to these employees because their duties "included the production of electric power for covered activities of their employer not excluded by this or any other exemption from the overtime compensation provisions of the Act". Secretary's Br., p. 53; see also the Employees' Brief, p. 54. They refer in this connection to power being used by the plantation railroad, roundhouse and office, which they state are covered and nonexempt (*Id.*) But, as the parties stipulated:

> "In extracting the juices from the sugar cane, one of the by-products is the cane fibre from the cane stalks, which is referred to as bagasse. When dried, one ton of bagasse has a fuel value approximately equivalent to two barrels of fuel oil. As indicated above, the extraction of the juices from the cane fibre and the processing of sugar cane into raw sugar require large amounts of power for the operation of the prime movers, conveyors and pumps. *It is therefore traditional in sugar cane processing to utilize the bagasse as an economical source of fuel for the production of power for use in performing the various processing operations.* An average of approximately three thousands tons of bagasse is produced each week when the mill is operating at full capacity. Fuel is also essential in the processing operations for the production of steam for heating and evaporating of the juices and the crystallization of the sugar. Fuel is also used to produce steam for the generation of electric power needed in the various operations of the plantation, as will be hereinafter more fully described. If the bagasse were disposed of as waste, other fuel would have to be obtained in order to obtain steam. *If the bagasse were not utilized as fuel, a difficult disposal problem would be presented because of its bulkiness and the large volume involved. Bagasse produced by the plantation has no marketable value*" (R. 85-86). [Emphasis supplied.] See also the District Court's findings (R. 761-762).

And as found by the District Court:

> "The power plant supplied power to the mill, field irrigation pumps, all the repair and service shops and related buildings, domestic water pumps, plantation houses, village services, and even several non-plantation users living in the plantation community who, because of their location, could more conveniently be served from plaintiff's lines than from the Hawaiian Electric Company" (R. 218).[17]

The District Court further found:

> "The total amount of power used by non-plantation users is about one-half of one per cent of all the power distributed by plaintiff. None of it is used for or in connection with the production of goods for commerce, or to operate any instrumentalities of interstate commerce, or transmitted into interstate commerce". (R. 762).

Thus, aside from the furnishing of power for agricultural uses and for uses which were not "in commerce," the power plant supplied power only as a necessary incident to the milling of sugar cane. It supplied no power for covered and nonexempt activities. In other words, the employees working in the power plant of the mill (R. 218-220) produced power for use in the field and mill operations of Waialua and at the same time produced power for use in the plantation dwelling houses and by non-plantation users. None of such latter power was used for or in connection with the production of goods for interstate commerce or to operate any instrumentalities of interstate commerce, nor was any of it transmitted into interstate commerce. To the extent that the employees in the power plant produced power for the field or mill operations of Waialua, they were performing work exempt under the agriculture and Section

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[17] Nothing in the Record, therefore, supports the Secretary's and Employees' statement that electric power was furnished by Waialua's power plant to Waialua's railroad or office.

7(c) processing exemptions, and to the extent that in the same workweeks they were supplying power for village use or for non-plantation users, they were performing work not covered by the Act at all. In performing both work that was exempt and work not covered by the Act in the same workweeks, the employees were excluded from the overtime provisions of the Act in such workweeks. Waialua's Br., p. 82, note 50.[18]

The cases cited by the Secretary (Secretary's Br., pp. 55-56) and Employees (Employees' Br., pp. 55-57) are not in point, for in all of them the employer was engaged in two separate businesses, one within the exemption and one outside it, and the courts properly held those employees nonexempt who engaged in the business extraneous to the exempt business. In the case at bar, however, the Employees were engaged either in the growing of sugar cane which was exempt under Section 13(a)(6) or in the processing of sugar cane which was exempt under both Section 13(a)(6) and Section 7(c). Nothing they did was extraneous to Waialua's production and processing of sugar cane. The cases relied upon by the Secretary and Employees would be in point only if Waialua were engaged in some extraneous business which is not covered by any exemption, such as the making of rum, the distilling of whiskey, the manufacture of candy, etc. But the Record shows that every single activity performed by the employees which is here in question was part of Waialua's operations of producing and processing sugar cane.

[18] Because of an existing tie-in between its power system and that of the Hawaiian Electric Company, Waialua, on rare occasions when it generates more power than it needs, feeds back such power into the system of Hawaiian Electric. But as the District Court found (R. 762, note) and the parties stipulated (R. 92), such power is not fed back in order to sell same but only because it is a necessary, convenient and economical method of disposing of the excess power.

III. THE EMPLOYEES, WHEN ENGAGED IN REPAIRING DWELLINGS AND MAINTAINING RELATED DOMESTIC FACILITIES, WERE NOT ENTITLED TO THE BENEFITS OF THE OVERTIME PROVISIONS OF THE ACT.

This aspect of the Employees' Brief (pp. 61-71) is fully answered in Waialua's Brief (pp. 73-82).[19] We wish only to reemphasize that a comparison of the crucial statutory language defining the scope of the Act's coverage, on the one hand, and the scope of the agriculture exemption on the other, demonstrates that if the activities of these employees is held to be covered by the Act, such activities must necessarily be held exempt under Section 13(a)(6). Waialua's Br., pp. 81-82; see also pp. 3-4, *supra*. The legislative history of the agriculture exemption, revealing the comprehensive character of the exemption (Waialua's Br., pp. 45-55), shows also that the words of the exemption, which include practices incident to or in conjunction with farming, were intended to be at least as broad as the words used to define the scope of the Act's coverage.

IV. ANY EMPLOYEE, WHO, IN A WORKWEEK PERFORMED WORK EXEMPT UNDER SECTION 13(a)(6) OR SECTION 7(c) AND DID NOT DEVOTE A SUBSTANTIAL PART OF HIS TIME IN THE SAME WORKWEEK TO AN ACTIVITY WHICH WAS NOT SO EXEMPT, WAS EXEMPT FROM THE OVERTIME PROVISIONS OF THE ACT DURING THAT WORKWEEK.

1. This aspect of the Employees' Brief (pp. 71-75) is fully answered in Waialua's Brief (pp. 82-84). We wish to add that this Court has had occasion to consider the problem of exempt and nonexempt work performed in the same workweek only in the case of the exemption provided by Section 13 (b)(1) of the Act for interstate motor carriers. This Court ruled that if the duties of the job performed by

[19] As previously observed, p. 2, note 1, *supra*, the Secretary states in his brief that he has never expressed an opinion on this matter, nor does he do so now. Secretary's Br., p. 3.

the employee are such that he is, or is likely to be, called upon in the ordinary course of his work to perform, either regularly or from time to time, safety-affecting activities, he is exempt under Section 13(b)(1) in all workweeks when he is employed at such job, regardless of the portion of his time and activity actually devoted to safety-affecting work, and even though in particular workweeks he may not actually engage in any activities directly affecting safety of operation. *Morris* v. *McComb*, 332 U.S. 422. See also *Pyramid Motor Freight Corp.* v. *Ispass*, 330 U.S. 695, 707-709; *Levinson* v. *Spector*, 330 U.S. 649, 675-676, 679 *et seq.*; and the Department of Labor's statement on the scope of the Section 13(b)(1) exemption, Title 29, Chap. V, Code of Fed. Reg., Part 782 (13 F.R. 2346) Sec. 782.2(b) and (c); 3 CCH Labor Law Reporter ¶24,108.02(b) and (c).

2. So far as the Secretary's Brief is concerned, the Secretary admits that in order to give substance to various exemption provisions in the Act, other than Sections 13(a)(6) and 7(c), it was necessary to allow tolerances of nonexempt work. Secretary's Br., p. 65. He contends in this connection that in such other exemption provisions, the exempt occupation is designated only by an undefined word or phrase. *Id.*, p. 64.[20] He argues, however that to allow

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[20] One of the exemptions to which the Department has accorded a 20% tolerance of nonexempt work is the Section 13(a)(5) fishing industry exemption. Waialua's Br., p. 105. To refer to such exemption as one designated by simply an undefined word or phrase is absurd in view of the fact that Section 13(a)(5) exempts as follows:

> "any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing (other than canning), marketing, freezing, curing, storing, or distributing the above products or byproducts thereof."

Another exemption for which the Department has allowed a 20% tolerance of nonexempt work is the Sec. 13(a)(15) exemption

similar tolerances under the exemptions granted agriculture and the processing of perishable agricultural crops would defeat the purposes of the Act. Secretary's Br., pp. 62-63, 63-64, 65. He states:

> ". . . the exemptions themselves [Secs. 13a (6) and 7(c)] state both the type of work for which the exemption is designed and a tolerance for related work. Sections 13(a)(6) and 7(c) exempt not only those directly engaged in the operations specifically mentioned, but also others whose work is 'incident to or in conjunction with' such operations (section 13(a)(6)) or who perform incidental work in the same place of employment (section 7(c)) (Secretary's Br., pp. 59-60) . . . This language [the language of Sec. 3(f) defining 'agriculture'] in itself provides a substantial tolerance for activities which are not of a strictly agricultural nature (Secretary's Br., pp. 63-64) . . . the Department is of the view that the tolerance specifically provided by the particularized language of the agricultural exemptions need not be broadened to accomplish the purposes of these exemptions, whereas the tolerances permitted under certain other sections of the Act are necessary to give substance to those exemptions." (Secretary's Br., p. 65).

The Secretary confuses the scope of an exemption with the concept of tolerance of nonexempt work. Whether the scope of an exemption be great or small, or whether it be stated in one word or many, or whether it does or does not include incidental activities, the scope of the exemption is separate and distinct from the allowance of a tolerance.

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for forestry or logging operations. Waialua's Br., p. 105. It is also absurd to characterize that exemption as "an undefined word or phrase", for it exempts

> "any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed twelve."

The problem of tolerance arises only where an employee, whose principal activities in a workweek come within the scope of an exemption, also engages in the workweek in a relatively small amount of additional activities. As above indicated, that problem is the same whether the scope of the exemption be great or small, or whether it be stated briefly or with the use of many words, or whether it does or does not include incidental activities. If, for example, transportation or processing comes within the scope of the agriculture exemption, the problem of tolerance is the same whether the exemption expressly specifies transportation or processing, or whether transportation or processing is included within the exemption as a practice incident to or in conjunction with farming operations.

As shown *supra*, p. 44, note 20, the Department allows a tolerance of up to 20% of nonexempt work in the case of the fishery exemption under Section 13(a)(5), where the scope of the exemption is great and where it is stated with the use of many words and where it includes incidental activities (going to and from work, loading and unloading, processing, marketing, etc.). The same principle should apply with respect to the agriculture exemption under Section 13(a)(6) and the processing exemption under Section 7(c).

V. THE COURT OF APPEALS ERRED IN ORDERING DISMISSAL OF WAIALUA'S DECLARATORY JUDGMENT SUIT ON THE GROUND THE PARTIES WERE IN "APPARENT COLLUSION".

The Employees' Brief (pp. 76, 80) fully concurs in Waialua's position, stating that "the controversy existed for many years before the suit was filed, and it exists today". Far from being in "collusion", Waialua and the employees were and are vigorous antagonists. Waialua's Brief, pp. 25-32; Employees' Brief, pp. 76-81. However, the Employees' Brief (p. 5) makes incomplete reference to earlier litigation under the Act, which took place prior to

the filing of the instant suit and counterclaim. The facts are:

On November 14, 1945, numerous employees of Waialua, including some of the employees here involved, filed suit under Section 16(b) of the Act in the United States District Court for the District of Hawaii, to recover unpaid overtime compensation allegedly due. *Takenaka et al.* v. *Waialua Agricultural Co. Ltd.*, D.C. Hawaii No. 640. Similar suits were also filed against all other Hawaiian sugar plantations by employees of each plantation, respectively. Thereafter each of the plantations, including Waialua, and the employees involved entered into a stipulation settling the pending suit by payment of a designated sum, and consenting to the entry of judgment for the plaintiffs in the suit, without conceding the plaintiffs' contentions therein. The payments were distributed to the employees by the Union representing them, namely, International Longshoremen's and Warehousemen's Union. The judgment entered January 25, 1946 against each plantation, including Waialua, specifically recited that:

> "In any litigation which may hereafter occur between the plaintiffs or any of them and said defendant, including the respective privies of the plaintiffs or any of them or of said defendant, with respect to liability under the Fair Labor Standards Act for any period subsequent to the 25th day of January, 1946, neither . . . this judgment shall operate as res judicata or as an estoppel or otherwise as determinative or evidentiary with respect to the application of the Fair Labor Standards Act or of any of its provisions to the plaintiffs or to any of them or to the defendant or to any of said privies or with respect to any issue of fact or issue of law which is or which has been or which might have been raised in the above entitled cause."

See *Record* in this Court, *Waialua Agricultural Company, Ltd.* v. *Maneja et al.*, October Term 1949, No. 588, pp. 6-7.

On or about the date that judgment was entered against each of the plantations, the aforesaid Union and the sugar-

cane plantations, including Waialua, agreed to institute and prosecute test suits to adjudicate the disputed interpretations of the Act. In April 1947, Waialua filed this suit, since the Waialua plantation was deemed typical and representative, so that the decision in that test case, all as explained by the Employees' attorney at the first trial (R. 840), would apply to all plantations and thereby resolve the serious and continuing controversy. The ensuing steps are explained in Waialua's Brief, pp. 6-11.

The Stipulation, which is set forth in full in the record, simply described the known and undisputed facts concerning Waialua's operations and the activities of the individual employees. *Id.*, pp. 11-14. This followed recognized practice in litigation under the Act. E.g., *Roland Electrical Co.* v. *Walling*, 326 U.S. 657, 661-662. The Stipulation carefully avoids conclusions of law as to commerce coverage or statutory interpretation. At no time did the parties enter into an "agreement on commerce coverage", as stated in the Employees' Brief, pp. 78, 80 note 46. All parties independently assumed in good faith that the employees (except those working in the mill village) were engaged in the production of goods for commerce. See Waialua's Brief, pp. 31-33. That assumption was compelled by applicable decisions of this Court, including *Farmers Irrigation Co.* v. *McComb*, 337 U.S. 755, 759. There could be no basis for criticism even if the parties had actually stipulated that the employees (other than those in mill village work) were engaged in the production of goods for commerce. E.g., *Madison Avenue Corp.* v. *Asselta*, 331 U.S. 199, 201; *Williams* v. *Jacksonville Terminal Co.*, 315 U.S. 386, 391.

Waialua submits that the parties are to be commended rather than condemned for their bona fide efforts over a period of eight years to submit their respective positions and contentions to the appropriate court, by all practical and legal procedures looking to final judgment on the merits. The fact that such judgment would be decisive of similar issues affecting all Hawaiian sugar plantations and

large segments of continental agriculture simply underscores the importance of the suit and the desirability of declaratory relief.

CONCLUSION

The instant case is but one part of a four-pronged effort by Hawaiian plantation employees to obtain overtime compensation after 40 hours of work in a workweek. The other three prongs are: (i) efforts directed at the Hawaiian legislature to have the Territorial wage and hour law amended to require payment to employees on Hawaiian sugar plantations of overtime compensation after 40 hours of work in a week, instead of after 48 hours as at present under the Revised Laws of Hawaii 1945, Title 9, Ch. 75, § 4354[21]; (ii) efforts directed at the Congress to have the Fair Labor Standards Act amended so as to obtain overtime compensation for Hawaiian sugar plantation workers for hours worked in excess of 40 in a week[22]; and (iii) efforts in collective bargaining since 1945 between the Hawaiian plantations, including Waialua, and representatives of the plantation employees, to obtain such overtime compensation for the plantation employees.

The foregoing demonstrates that the Employees themselves recognize that under the Act as it presently stands, they are not entitled to the overtime benefits of the law, and that the proper avenues for obtaining such benefits are either thru collective bargaining or amendatory legisla-

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[21] See following bills, introduced in the legislature of the Territory of Hawaii: *Senate* Bill No. 45 (Feb. 21, 1947); *Senate* Bill No. 203 (Feb. 18, 1955); *House* Bill No. 517 (Feb. 25, 1955); *House* Bill No. 597 (March 1, 1955).

[22] Waialua's Br., p. 53.

tion. *Cf. Addison* v. *Holly Hill Fruit Products*, 322 U.S. 607, 617.

Respectfully submitted,

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LIVINGSTON JENKS
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APPENDIX

DEPARTMENT OF LABOR'S FINDINGS AND OPINION, TRANSCRIPT OF PROCEEDINGS OF INDUSTRY COMMITTEE FOR SUGAR AND RELATED PRODUCTS INDUSTRY, AND OPINION LETTER DEALING WITH APPLICATION OF SECTION 13(a)(6) TO CANE TRANSPORTATION

1. *Findings and Opinion of May 20, 1943 published incident to Department's approval of a wage order for the Sugar and Related Products Industry (8 F. R. 7098).*

> "No objection to the definition of the Sugar and Related Products Industry was offered by any interested party at the public hearing before Major Campbell. Objection was, however, raised in a brief filed with the Committee by the American Sugar Cane League of the U. S. A., to that part of the definition which reads: 'The production of any products covered under this definition shall be deemed to begin with the loading of the raw materials at the farm.' Objection to this language was also voiced by Mr. Ernest W. Greene, Washington, D. C., a representative of the employers on the Committee. A proposed amendment of the above language was offered on behalf of the Hawaiian Sugar Planters Association. I have carefully considered these objections and suggestions upon the evidence in the record. Any apprehension that the language in question may be regarded as including agricultural employees who are exempt from the Act's minimum wage provisions under Section 13(a)(6) is hardly justified in view of the fact that Administrative Order No. 162 appointing Industry Committee No. 50 and defining the Sugar and Related Products Industry, specifically excepted from the scope of the Committee's jurisdiction 'employees exempted by virtue of the provisions of Section 13(a) * * * .' "*

---

* "Administrator's Exhibit 1-A, paragraph 4. Whether or not a particular employee engaged in loading or transporting sugar cane from a farm to a mill is to be regarded as 'employed in agriculture,' as agriculture is defined in Section 3(f) of the Act, and hence exempt from the minimum wage provisions of the Act under Section 13(a)(6), is a question of fact to be determined upon the

2. *Excerpts from Informal Hearing and Meeting of Industry Committee No. 50 for the Sugar and Related Products Industry held January 5, 1943.*

"MR. GREENE: May I ask a question at this time, Mr. Chairman?

"CHAIRMAN KREPS: Surely.

"MR. GREENE: Greene is my name. I wish to speak to the point of this brief to the extent of its comment on the definition. My comments have nothing to do with Mr. Winston's. In the second paragraph of the definition contained in the Administrative Order it says: 'The production of any products covered under this definition shall be deemed to begin with the loading of the raw materials at the farm.' That definition in the light of the Interpretative Bulletin No. 14, issued some time ago by the Wage and Hour Division, was a little confusing to many of us, not as an argumentative or technical point but merely as a matter of clarity and of knowing where these wages which we are now discussing are to begin, and in the economic data we find that the case of *Calaf et al.* vs. *Gonzales et al.* is cited as authority for the definition, which would deny exemption to any employees even of the owner of a farm engaged in transporting sugar cane from the farm to the factory on the ground of the decision in that Calaf case insofar as the layman can read it. That decision was based upon conditions peculiar to Puerto Rico, an area not covered directly by the Act, to which the Act applies only when specially invoked for it by a special Committee, not a Committee such as this, and conditions which do not obtain generally throughout certain

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basis of all the evidence and the applicable rules of law. See Interpretative Bulletin No. 14, paragraphs 1-13. See also the decision of the Circuit Court of Appeals for the First Circuit in the case of *Calaf* (*Collazo*) v. *Gonzalez*, 127 F. (2d) 934, where it was decided that the Section 13(a)(6) exemption was inapplicable to employees engaged in transporting sugar cane from their employer's farm to their employer's sugar mill, even though the cane was grown by the employer of the employees in question. See also the decision in the case of *Gonzalez* v. *Bowie*, 123 F. (2d) 387 (C. C. A. 1), to the effect that the Section 13(a)(6) agricultural exemption was inapplicable to employees transporting sugar cane of independent growers to their employer's sugar mill."

other sugar cane producing areas. We find a recognition of that by the Court when the decision contains the following: 'We would be presented with a very different problem if the evidence disclosed that the heart of the transportation system and the situs of the employment of the workers were located on the farm.'

"Now without laboring any lengthy discussion, it is customary in the territory of Hawaii for a sugar cane farm to be a large scale farming unit complete with a processing plant for grinding the sugar cane and producing raw sugar located at some convenient point on the farm with the farm containing a transportation system for serving that, the fields and the plant, and the situs of the employment of the workers in the heart of the transportation system is very decidedly on the farm. Now I realize that nothing that is put out by way of definition and nothing that I or anyone else on this Committee can say can change the statute or the decision of a court, but I do wish to point out that this definition, which has been set up to guide us as to where these wages which we are discussing would apply, seems to me to ignore the language of the court which applies directly to conditions which exist in many cases in Hawaii and I believe that the distinguished member from Louisiana will agree that it applies also to many cases in Louisiana where you do not have the separate farm property, separate mill property, visualized in a court decision that apparently existed in that case. I wish to bring to the attention of the Committee that that definition seems to me to be out of order.

"CHAIRMAN KREPS: Thank you, Mr. Greene. Does anyone else wish to speak to this particular point?

"MR. SHISHKIN: Mr. Chairman.

"CHAIRMAN KREPS: Mr. Shishkin.

"MR. SHISHKIN: It seems to me that the brief just discussed raises a question of definition and it might be useful for the Committee to hear a representative of the Wage and Hour Division read the present definition and also indicate to the Committee the extent of coverage of the Fair Labor Standards Act in terms of the statutory minimum wage application to the industry at the present time so that we will have a clear idea as to the extent to which the Act applies.

• • • • • • • • • •

"CHAIRMAN KREPS: The brief and certain legal aspects have been called into question and I suggest we therefore turn to the staff. May I ask Dr. Klingenfeld to speak to this point?

"MR. KLINGENFELD: Mr. Chairman, I should like at this time to refer the matter to our economist, Mr. Hughes, who will take up the definition in connection with his study, and also will speak to the point raised by both Mr. Greene and Mr. Shishkin. If that is all right with you, I should like to refer the thing to Mr. Hughes in his general presentation of a report.

"CHAIRMAN KREPS: Mr. Hughes will explain the economic report, of which all of us have been given a copy.

"MR. HUGHES: First with respect to the definition, the intention behind this definition was to put together in one industry as many competitive products and essential processes as possible so as to bring them to the attention of the Industry Committee with dispatch. There is no question but what refined sugar and beet sugar are competitive, nor is there any question but what raw cane sugar and beet sugar are competitive even though raw cane sugar has to be further processed before being used. The processing of sugar cane into raw cane sugar is competitive with the processing of sugar cane into syrup inasmuch as both processors have to compete for sugar cane in some areas, and in those areas where sugar cane syrup manufacturers and raw sugar manufacturers are located within the same vicinity they have to compete for labor. All the syrups covered herein are competitive with sugar to the extent that they are used as substitutes for sugar, and maple syrup, of course, is covered because of its competition with sugar cane syrup and sorgo syrup.

"With respect to the operations covered, the intention behind the definition is to cover all those which were not otherwise exempt. The definition does not and cannot cover any operations which are specifically exempt from the wage provisions of the Act. Thus, any operations which are now exempt as being agricultural under Section 13(a)(6) of the Act would remain exempt and any operations which now get the benefit of the area of production exemption, Section 13(a)(10), would also remain exempt. The establishments which would be primarily covered by this definition are cane sugar refineries, raw sugar factories, syrup manufac-

turers, and beet sugar factories. As indicated in the report, these establishments are pretty generally distributed over the entire United States, with certain types of establishments being centralized in certain areas, as, for example the manufacture of raw sugar in Louisiana, Hawaii, and Florida, and beet sugar factories being located principally in the Middle West and Far West.

• • • • • • • • • • •

"CHAIRMAN KREPS: Any other questions any of the committee members would like to ask of Mr. Hughes? I am wondering whether Mr. Brown might give us some—returning to the point of the definition—whether Mr. Brown would like to give us his views on the question of definition as stated in the paragraph which has been challenged by some members of the committee.

"MR. BROWN: I want to say a few words on that. As Mr. Hughes stated at the outset, any definition in any case including this one is subject to whatever exemptions may already exist in the act, and insofar as there is an exemption in 13(a)(6) of the act for agriculture, why of course any definition of this industry would be subject to that exemption.

"Now, that exemption, of course, exempts from minimum wages and overtime, activities which are deemed agriculture. Now, however the act does not go into great detail as to what activities are deemed agriculture and those which are not, and the Interpretative Bulletin No. 14 that was mentioned is merely the Division's opinion of what the courts will consider to be agriculture; and as a matter of fact there have been a few cases on that point, not very many, but some important ones, so that the thing to bear in mind is that there is no danger of fixing a minimum wage or anything that should not be fixed, should not be covered under this definition because the courts will eventually, and have already begun to indicate which activities on the farm and off the farm, are to be deemed agriculture. I don't think that we here in the Wage and Hour Division are prepared to go into any detail now, or could, even if we wanted to, go into detail to indicate what activities will be deemed agriculture and which will not. That is up to the courts.

"With respect to that particular point about the defi-

nition, namely the second paragraph, and that the production or any production covered under this definition should be deemed to begin with the loading of raw materials at the farm, why insofar as any of that loading will be held to be deemed part of farming and part of agriculture, of course that loading by a farmer or on a farm may be held by the courts to be agriculture and outside of the scope of this definition; but insofar as the courts may hold and might hold that certain loading by a mill of raw materials may be deemed to be not agriculture but merely part of grinding, why then it will be covered, but as I say that is something that will depend upon two things, the facts in each particular case and the courts will have to go into the facts to determine whether or not the loading is incidental to agriculture or incidental to milling and then upon those facts the courts will tell us whether it is to be exempt under 13(a)(6) or not.

"I think that is all I can tell you right now because it isn't for the Division to give a ruling or binding interpretation as to the definition." *Excerpts from Informal Hearing and Meeting of Industry Committee No. 50 for Sugar and Related Products Industry* held January 5, 1943, pp. 9-12, 12-14, 24-26.

3. *Exchange of letters with Mr. Paul E. Guillot, Paincourtville, Louisiana.*

a. *Letter from Mr. Guillot to the Wage and Hour Division.*

DUGAS & LEBLANC, LTD.
Manufacturers of
Westfield Sugars and Molasses

Paincourtville, La.
Sept. 29th, 1942

U. S. Department of Labor,
Wage and Hour Division,
Washington, D. C.

Gentlemen:

I am General Bookkeeper for the above firm, having been in their employment for the past twenty years. I am per-

fectly satisfied and fully desire to have my employer protected in every respect.

I would appreciate if you will assist me in giving me a definite ruling on the hour provision of the act with respect to our clerical force.

These people are Cane Farmers, Manufacturers of raw sugar and blackstrap molasses all moving to refineries within the state. Also a Narrow Gauge Railroad hauling our cane, and independent growers cane, but we bear the expense of the operation. They also operate in connection with their business, a retail store. The entire accounting record is kept and the work performed by the same office crew. Now, according to our interpretation of Bulletin No. 14, we arrive at this conclusion:

Farming-Agriculture	Exempt from hour provision
Processing Raw Sugar ..	Do.
Retail Store	Do.

Are we correct? Would the clerical help be also exempted?

My reasons for checking up on this and getting a specified ruling is that help is getting scarce, and it may be that we will have to put in longer hours, especially, during the harvesting and processing season.

Please advise promptly, and oblige,

Very truly yours,

/s/ PAUL E. GUILLOT

b. *Letter from Mr. William B. Grogan for the Administrator to Mr. Guillot.*

165 West 46th Street
New York, New York

SOL:JHS:DS

November 26, 1942

Mr. Paul E. Guillot
Dugas & LeBlanc, Ltd.
Paincourtville, Louisiana

Dear Mr. Guillot:

This will reply to your letter of September 29 relating to the application of the Fair Labor Standards Act of 1938 to the operations of a sugar mill in which you are general

bookkeeper. The original of your letter was sent directly to this Division; one copy was forwarded by Senator Allen J. Ellender of your State; and one copy was forwarded by Congressman James Domengeaux.

Both Senator Ellender and Congressman Domengeaux referred their copies of your letter to this Division for reply.

You state that your employers are cane farmers and manufacturers of raw sugar and blackstrap molasses, all moving to refineries within your State. They operate a narrow gauge railroad hauling both their own cane and the cane of independent growers. They also operate in connection with their business a retail store. The entire accounting record is kept by the same office crew. You conclude that the employees engaged in farming activities, processing of raw sugar and the retail store are exempt from the hour provisions of the Act. You ask if the clerical help would be exempt.

It appears that you already have a copy of Interpretative Bulletin No. 14. The first 13 paragraphs of that bulletin set forth the Administrator's interpretation of the scope of Section 13(a)(6) of the Act. However, the recent decision of the United States Circuit Court of Appeals in *Calaf* v. *Gonzalez*, 127 F. (2d) 934 (C. C. A. 1) indicates that the mere fact that owners of sugar cane farms are also owners of a sugar mill and transportation facilities does not make transportation of the cane from the farms to the mill "incident to farming" and therefore exempt under Section 13(a)(6). Therefore, your employees engaged in transporting cane from the fields to the mill are not exempt under section 13(a)(6) of the Act. Except for the qualification just referred to, I believe that the first 13 paragraphs of bulletin 14 will enable you to determine which of your employer's employees are engaged in "agriculture" and therefore within the scope of the section 13(a)(6) exemption, and thus exempt from both the minimum wage and overtime provisions of the Act.

Section 13(a)(2) of the Act contains an exemption from both its minimum wage and overtime provisions for: "any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce." Your employer operates a retail store in connection with its business. An establishment will not qualify

for exemption under section 13(a)(2) unless more than 50 percent of its dollar volume of sales is in intrastate commerce. The exemption will also be defeated if its nonretail selling is substantial. For enforcement purposes, the Division will ordinarily consider the nonretail selling of an establishment to be substantial if the gross dollar volume of nonretail sales constitutes more than 25 percent of the gross receipts of the establishment. If this store meets the two tests above and is open to and frequented by the general public, it is probably a retail establishment within the meaning of section 13(a)(2) If so, employees solely employed in the retail store are exempt from the wage and hour provisions of the Act in any weeks in which they are employed solely in the retail establishment.

As to employees outside the scope of the two exemptions referred to above, consideration should be given to the application of the section 7(c) exemption. This section exempts from the overtime, but not minimum wage, requirements of the Act, employees processing sugar cane into sugar (but not refined sugar) in any place of employment where their employer is so engaged. In the ordinary case, the making of blackstrap molasses comes within the scope of this exemption. To be within the scope of this exemption, an employee must be employed in the establishment where operations exempt under this section are performed. Truck drivers who carry raw materials to the establishment, or who transport away from the establishment goods upon which exempt operations have been performed, may be considered as working in the "place of employment" within the meaning of this section.

You state that the accounting work related to all of your employer's operations are performed by the same office crew. Bookkeeping and other clerical employees may, in proper circumstances, be exempt under sections 13(a)(6), 13(a)(2) or 7(c). As to all your employees, the doing in a workweek of any work exempt only from the overtime provisions of the Act will require compliance with the minimum wage provision for all hours worked in the week. And the doing of any work exempt from neither the minimum wage nor overtime requirements will require compliance with both provisions for all hours worked in that week.

The minimum wage now applicable in the sugar industry is 30 cents an hour. However, the Administrator has re-

cently appointed an industry committee for the "Sugar and Related Products Industry." Under the provisions of the Fair Labor Standards Act, this industry committee may recommend to the Administrator for the sugar industry a minimum wage rate not to exceed 40 cents an hour. If such a recommendation for a rate in excess of 30 cents is approved by the Administrator, it will become effective on the date prescribed by him. If the Administrator approves such a wage order for the sugar industry, the usual public notice will be given in advance of its effective date.

If you have further questions, information may be obtained from our New Orleans, Louisiana office located at 916 Union Building in that city.

Very truly yours,

/s/ WILLIAM B. GROGAN
Acting for Administrator

L. METCALFE WALLING

MOTION FILED FEB 21 1955

Office Supreme Court, U.S.
FILED
MAR 28 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

Nos. 357 and 358

CIRACO MANEJA, ET AL.,
Petitioner,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Respondent.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Petitioner.

vs.

CIRACO MANEJA, ET AL.,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF FOR AMERICAN FARM BUREAU FEDERATION AS AMICUS CURIAE.

PAUL E. MATHIAS,
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Attorney for American Farm Bureau Federation.

Of Counsel:
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222 West North Bank,
Chicago 54, Illinois.

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

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CIRACO MANEJA, ET AL.,
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vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Respondent.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Petitioner,

vs.

CIRACO MANEJA, ET AL.,
Respondent.

MOTION BY AMERICAN FARM BUREAU FEDERATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The American Farm Bureau Federation, through its attorneys, respectfully moves for leave to file a brief *amicus curiae* in the above captioned cases. The consent of all of the parties in the above captioned causes to the filing of a brief *amicus curiae* was sought. The attorney for Waialua Agricultural Company, Limited, by letter dated February 14, 1955, consented, but the attorney for Ciraco Maneja, *et al.*, by letter dated February 9, 1955, refused to consent to the filing of such a brief.

The American Farm Bureau Federation is a nonprofit

corporation organized under the laws of the State of Illinois and having its principal office at 222 West North Bank, Chicago 54, Illinois. It is a general farm organization organized to promote, protect and represent the interests of the farmers of the United States. It has a membership of more than 1,600,000 farm families with members in all of the states of the United States and in Puerto Rico. While the American Farm Bureau Federation is not a party to the case, its membership throughout the United States will be affected by the decision in this case. It is, therefore, requested that the American Farm Bureau Federation be allowed, as a representative of agriculture, to indicate the views of the latter by means of the accompanying brief as regards the issues herein involved. The parties hereto are solely concerned, and properly so, with a specific controversy as is reflected in their briefs. Since, for the reasons previously stated, the issues and their ramifications are much broader in scope than these briefs would indicate, the American Farm Bureau Federation desires to present to this Court additional information and arguments.

The above entitled causes involve the construction and interpretation of the agricultural exemption contained in the Fair Labor Standards Act (29 U. S. C. Sec. 201, *et seq.*). Specifically, a decision by this Court will necessitate a determination of whether certain activities performed in conjunction with and in furtherance of the Waialua Agricultural Company's farming operations fall within the purview of the above mentioned agricultural exemption.

The subject case involves the application of the agriculture exemption in the Act to only the operations of a Hawaiian sugar plantation. But as pointed out by the Court of Appeals below, the statutory exemption "is a charter for the mainland farmer" (R. 743), so that the interpretation

placed upon it by this Court will apply to agricultural operations upon all commodities, whether on the mainland or in Hawaii and the other Territories and possessions of the U. S. (R. 743-744). The Court of Appeals in its earlier opinion also recognized that the decision here would apply to all agricultural operations and not only to the specific situation presented here of Hawaiian sugar operations (R. 831, 840).

The Government likewise, in its Memorandum filed in support of the employees' petition for certiorari in No. 357, emphasized that the decision here would affect not only workers in the sugar industry, but large numbers of employees engaged in similar operations related to other agricultural products, such as fruits, vegetables, wheat, tobacco, etc. (Gov't. Memo, p. 12).

We submit that upon the authority of *Ford Motor Co.* v. *Huffmann,* 345 U. S. 330, 343, this Court should grant the American Farm Bureau Federation leave to file a brief *amicus* as here requested. In the cited case this Court referred to the several briefs of *amici curiae,* as showing the widespread acceptance and relevance in collective bargaining contracts generally of the type of provisions before the Court in that case, even though the only problem before the Court concerned certain specific provisions in the collective bargaining contract between Ford Motor Company and a single specific union.

Respectfully submitted,

s/ PAUL E. MATHIAS,
PAUL E. MATHIAS,
43 East Ohio Street,
Chicago 11, Illinois,
Attorney for American Farm Bureau Federation.

NOTICE OF MOTION.

To: Richard Gladstein
Attorney for Ciraco Maneja, et al.
240 Montgomery Street
San Francisco 4, California

Rufus G. Poole
Attorney for Waialua Agricultural Company, Limited
1625 K Street, N. W.
Washington 6, D. C.

PLEASE TAKE NOTICE that on the 21st day of February, 1955, the undersigned will file the above Motion and accompanying Brief in the office of the Clerk of the Supreme Court of the United States, said Motion to be considered at the convenience of the Court.

s/ PAUL E. MATHIAS,
PAUL E. MATHIAS,
43 East Ohio Street,
Chicago 11, Illinois,
Attorney for American Farm Bureau Federation.

AFFIDAVIT OF SERVICE.

George E. Merker, Jr., being duly sworn, deposes and says that in compliance with paragraph 33(1) of this Court's Rules, he deposited a copy of the above Motion and Notice of Motion in the United States Post Office in the City of Chicago, properly addressed to Richard Gladstein, 240 Montgomery Street, San Francisco 4, California, and to Rufus G. Poole, 1625 K Street, N. W., Washington 6, D. C., with first-class air mail postage fully prepaid on the 18th day of February, 1955.

s/ GEORGE E. MERKER, JR.,
GEORGE E. MERKER, JR.,
Of Counsel.

Subscribed and sworn to before me this 18th day of February, 1955.

s/ FRANK BURNJAS,
Frank Burnjas, Notary Public.

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Statement 1

Argument 4

Employees engaged in the aforementioned activities are "employed in agriculture" within the meaning of section 3 (f) and are therefore exempt from the wage and hour provisions of the Act as provided by section 13 (a) (6)..... 4

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

Nos. 357 and 358.

CIRACO MANEJA, ET AL.,
Petitioner,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Respondent.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Petitioner,

vs.

CIRACO MANEJA, ET AL.,
Respondent.

BRIEF FOR AMERICAN FARM BUREAU FEDERATION AS AMICUS CURIAE.

STATEMENT.

On November 8, 1954, by order entered (R. 843, 844), this Court granted the separate Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, theretofore filed with it by both Ciraco Maneja, *et al.* (hereinafter called the employees), in No. 357 and Waialua Agricultural Company, Limited (herein-

after called Waialua) in No. 358, and consolidated the two cases hereinabove named for argument.

This brief relates only to the questions presented in No. 357 as set forth in Waialua's Brief, pp. 5-6 and does not attempt to enter into the questions presented in No. 358.

The American Farm Bureau Federation (hereinafter called Farm Bureau) is a nonprofit corporation organized under the laws of the State of Illinois having its principal office at 222 West North Bank, Chicago 54, Illinois. It is a general farm organization of more than 1,600,000 farm families in all of the States of the United States, and Puerto Rico.* The objects of the Farm Bureau are to promote, protect and represent the business, economic social and educational interests of the farmers of the United States, and generally to develop agriculture.

The interest of the Farm Bureau in this case derives from the fact that the decision of the District Court, which the employees seek to have this Court approve, would deprive all farmers in the U. S. of the agriculture exemption in the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C. Sec. 201, *et seq.*) with respect to many activities, which, under the controlling case law and the administrative interpretations of the U. S. Department of Labor, clearly fall within the language and purpose of the exemption. Farmers in the U. S. have relied upon such judicial and administrative authority and have operated thereunder since the passage of the Act in 1938.

The employees would deny the agricultural exemption to many common everyday activities performed by most American farmers and farms. Such activities are: (1) the haul-

* While the Hawaiian Farm Bureau Federation is not as of the date of this brief a member of the American Farm Bureau Federation, the Hawaiian Farm Bureau Federation has been apprised of the action here taken by the American Farm Bureau Federation and favors the position and action taken.

ing by the farmer of the farm's products to a storage place or a processing plant located either on or off the farm or to any market; (2) the hauling of feed, fertilizer, seed, other agricultural supplies, agricultural equipment and laborers from one part of the farm to another; (3) the hauling by the farmer of necessary farm supplies and equipment from a nearby town to the farm; (4) the maintenance, repair and operation by the farmer of his trucks, vehicles and other hauling facilities, including maintenance of field roads on the farm; (5) the repair and overhauling by the farmer or on the farm of farm machinery, equipment and implements; (6) the maintenance and repair by the farmer or on the farm of farm buildings and grounds and tools and implements used in the farm operation; and (7) the processing by farmers or on the farm of agricultural products grown on the farm preparatory to marketing.

We contend that the above enumerated activities fall squarely within the agricultural exemption provided by the Act. If a decision holding otherwise is reached, then all American agriculture, and not only sugar cane farming, will be substantially deprived of the exemption which the Act now grants.

We respectfully submit that the language of the exemption provision (Section 13 (a) (6) of the Act), its legislative history, the case law and the administrative interpretations of the U. S. Department of Labor thereunder unassailably establish that such activities are exempt.

ARGUMENT.

EMPLOYEES ENGAGED IN THE AFOREMENTIONED ACTIVITIES ARE "EMPLOYED IN AGRICULTURE" WITHIN THE MEANING OF SECTION 3 (f) AND ARE THEREFORE EXEMPT FROM THE WAGE AND HOUR PROVISIONS OF THE ACT AS PROVIDED BY SECTION 13 (a) (6).

A. The Exemption Is Not Destroyed Because Farm Operations May Be Mechanized.

As the courts have recognized, the Act in Section 3 (f) contains a very broad, comprehensive and far-reaching definition of the term "agriculture." *McComb* v. *Farmers Reservoir Co.*, 337 U. S. 755, 762, *et seq.*; *Addison* v. *Holly Hill Fruit Products*, 322 U. S. 607, 612; *Damutz* v. *Pinchbeck*, 158 F. (2d) 882, 883 (C. C. A. 2). The definition does not distinguish between farming operations that are mechanized and those that are not mechanized, and the courts in the cases above cited have refused to recognize any such distinction. See also, *Miller Hatcheries* v. *Boyer*, 131 F. (2d) 283, 285 (C. C. A. 8). If an employee comes within the statutory definition, he is exempt without qualification, whether his operation is conducted by hand or by extremely complex machinery. For the past 35 years or more there have been great technological advances in American agriculture and the United States Department of Agriculture has encouraged such technological advances. These have taken place in the case of many varieties of farming. *Hopkins, Changing Technology and Employment in Agriculture.* (U. S. Department of Agriculture, 1941) p. 53. For example, the labor required on an acre of wheat in 1934-36 was half the amount needed in 1909-13. *Technology on the Farm* (U. S. Department of Agriculture, 1940) p. 61.

As part of this trend toward greater productivity, each census since 1880, with few exceptions, has shown an increase in the average size of farms. The most noticeable increases were in the areas best suited to the use of power equipment. *U. S. Census of Agriculture* (1945) Pt. II, p. 65. Approximately as of the date of enactment of the Fair Labor Standards Act, about 10% of the nation's farms accounted for 54% of the farm produce and 68% of the cash farm wage bill in the United States. *Supp. Rep. 1012. Pt. II, Committee on Education and Labor*, 79th Cong. 1st Sess., p. 77. The record in the present case demonstrates how these technological advances have taken place in the case of Waialua's sugar plantation (R. 114-116).

When Congress enacted the Fair Labor Standards Act in 1938, it was presumably aware of these technological forward strides in agriculture. Had it intended to distinguish in the exemption for agriculture written into the Act between those farms which are not mechanized and those which are, it could quite easily have expressed such intent. It did not do so, but as we shall show, simply defined the term "agriculture" in functional terms.

B. Section 3 (f) Was Intended to Exempt Anything the Farmer Does in Connection with Growing and Marketing His Crop and in Addition Anything That Is Done on the Farm in Connection with Growing and Marketing the Crops of That Farm.

The definition starts with "farming in all its branches." It then proceeds to enumerate specific activities including preparation of the soil, growing of agricultural commodities and harvesting of them. Finally the definition includes

> "any practices (including any forestry or lumbering operations) performed by a farmer *or* on a farm as an incident to *or* in conjunction with such farming opera-

> tions, including preparation for market, delivery to storage or to market or to carriers for transportation to market." (Emphasis supplied.)

Language could not be more clear to evince an intent to exempt all activities performed by the farmer or on the farm in connection with growing and marketing the farm's crops.

We consider briefly the terms "farm" and "farmer". Generally speaking the term "farm" means a tract of land or several tracts of land or fields owned or controlled by one or more persons and devoted to the production of agricultural products as a single enterprise under common management with common equipment and labor. Many farms consist of several and sometimes many separate tracts or fields. The operator of the farm has always been designated a "farmer". Most farmers are individuals. However, there are thousands of farming partnerships in the United States and in recent years it has been quite common for joint owners to incorporate rather than to operate as partners. All of such types of farmers are included within the membership of Farm Bureau.

Practically every farm in the United States, whether large or small, and whether it produces livestock, milk or grows grain, forage crops, seed, cotton, fruits or vegetables, tobacco or any other agricultural commodity, engages in one or more of the activities engaged in by Waialua Agricultural Company, Limited, (hereinafter called "Waialua"). Almost all farmers, as part of their harvesting operations, haul their crops to a storage place or a processing plant located either on or off the farm or to some market. A great many of them conduct extensive processing operations upon their own crops. For example, many fruit and vegetable farmers pack and can their own fruits and vegetables; many cotton farmers gin their own cot-

ton; many poultry and hog farmers slaughter and dress their poultry and hogs. The apple farmer, for example, may haul his apples to a storage place on the farm or he may sort, wrap and pack the apples and otherwise prepare them for market or he may process the apples in one form or another, or he may haul them to a packing or processing plant off the farm to which he sells them. The grain farmer may haul his grain to a storage place on his farm or to a nearby elevator to which he sells same; the dairy farmer may haul his milk to a bottling plant on his own farm or to a nearby bottling plant or creamery to which he sells same or he may bottle the fluid milk or process it into butter and cheese on his own farm and then transport the same to market; the cotton farmer may haul his cotton to a gin located on or off the farm, and so forth. Unquestionably, when so performed, these are operations performed by a farmer or on a farm as an incident to or in conjunction with farming operations; *Farmers Reservoir Co.* v. *McComb*, 337 U. S. 755, 763, 766, note 15; *Redlands Foothill Groves* v. *Jacobs*, 30 F. Supp. 995 (S. D. Calif., 1940); *Damutz* v. *Pinchbeck*, 158 F. (2d) 882. All farmers likewise haul agricultural supplies and equipment to the particular field or fields of the farm where such supplies and equipment are to be used; all of them go to town with their trucks or other vehicles to pick up supplies and equipment for use on the farm; all do some maintenance work to keep in good usable condition their trucks or other vehicles or hauling facilities, including the field roads on the farm; all do some repair work on their agricultural equipment, machinery and implements; and all do some maintenance and repair work on the farm buildings and grounds, and on their tools and implements used in the farming operation. Without some or all of these various activities, no farm could grow or produce anything. Thus the contention of the employees

herein, if sustained, would apply to all farming and would effectively destroy the agricultural exemption for all farms and ranches and not only for the Hawaiian sugar plantations.

Furthermore, with respect to the various hauling activities, no distinction can be drawn on the basis of the medium used for such hauling. In some cases as in the case before the Court here, the medium used for bringing in the sugar crops to the mill was a narrow gauge railroad, although it appears from a recent Government report that many other methods of transportation are used on Hawaiian sugar plantations with a general trend toward large motor trucks. *The Economy of Hawaii in 1947*, Bureau of Labor Statistics, U. S. Department of Labor, Bulletin No. 926, p. 45. In the case of a small cotton or tobacco farmer, he may haul his cotton to the cotton gin or his tobacco to a tobacco stemmery by horse-drawn vehicle. In the case of a fruit farmer, for example, he may haul his fruit to a packing or processing shed or establishment by large truck. In many instances such trucks will carry 10 tons or more in weight. We note that in the case at bar the rail cars on the narrow gauge railroad averaged only 4¾ tons per car gross cane (R. 58). We also note that because of the technological advance in agricultural transportation, the said railroad was discontinued as a medium of transportation at this plantation late in 1952 as stated in the cause entitled *Waialua Agricultural Company, Limited* v. *United Sugar Workers I. L. W. U. Local 142*, 1953, 114 F. Supp. 243 (D. Hawaii) and the record therein. We cannot conceive of any basis upon which the type of vehicle used in the hauling could make any difference in the application of the exemption. As an economic matter the farmer, consistent with his means, will use that mode of transportation best suited for his type of farming. In all cases, however, whatever the

medium used, the hauling is simply an inseparable part of the farmer's operations of growing agricultural commodities, harvesting them and marketing them.

It is perfectly plain then that the statutory definition of agriculture when it refers to "farming in all its branches", "harvesting" and "practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market", includes the activities listed, *supra*, pp. 2 and 3.

C. The Legislative History of Sections 13 (a) (6) and 3 (f) Confirms That All the Activities Here Described Were Intended to Be Exempt.

As the bill which finally became the Fair Labor Standards Act worked its way through the legislative mill to final passage, repeated assurances were given by members of the Congress that a full exemption had been accorded to all activities performed by the farmer or on the farm in connection with the growing and marketing of the farm's crops. All agreed that the agricultural exemption was to be plenary and that all agriculture without exception was excluded from the coverage of the Act. It is obvious from the legislative history that the bill never would have become law but for such assurances and the consequent feeling on the part of the legislators that *all* agriculture was in fact exempt. 83 Cong. Rec. 7393, 9257.*

The bill (S. 2475) was introduced in the Senate on May 24, 1937 and was referred to the Senate Committee on Education and Labor, which wrote into the bill a broad definition of "agriculture" and then reported it to the Senate.

* We are not setting forth any part of the text of the debates as representative portions are contained in pp. 45-51 and 90-96 of the brief filed herein by Waialua.

S. 2475 as reported in the Senate, July 6, 1937, Sec. 2, pp. 50-51. Senator Black, Chairman of the Senate Committee in charge of the bill, stated to the Senate that the bill specifically excluded workers in agriculture of all kinds and of all types. 81 Cong. Rec. 7648. When he made this statement the agricultural definition in the bill, insofar as it related to practices incidental to farming operations, limited the exemption to those practices "ordinarily" performed by a farmer as an incident to farming operations.

In various colloquies between Senator Black and other Senators, the former made it clear that the exemption applied to all the things the farmer did with reference to producing his crops and marketing them—whether the crops were cotton, fruits or vegetables, or any other commodity. 81 Cong. Rec. 7657, 7658, 7659. Senator McGill then proposed an amendment which was adopted with the approval of the Labor Committee, which amendment provided that the agricultural exemption should apply not only to practices ordinarily performed *by a farmer* as an incident to his farming operations, but also to practices ordinarily performed *on a farm* as an incident to such farming operations. His amendment further added to the exemption for agriculture the activity of "delivery to market". The purpose of the McGill amendment, as explained by its author, was to exempt *all* kinds of labor performed on a farm so long as it was "incidental to agricultural purposes" and was merely preparatory to the marketing of *any* field crop and *all* kinds of labor performed in connection with making delivery to market of agricultural products. The discussions on Senator McGill's amendment are abundantly clear that such amendment was intended to apply to any commodity produced on a farm—peanuts, fruits and vegetables, grain, livestock, sugar cane, etc. 81 Cong. Rec. 7888, 7927, 7928-7929.

The language added to the agricultural definition by Senator McGill's amendment remained in the bill and was ultimately part of the bill as enacted. No activities are more essentially "incidental to agricultural purposes" than those we are presently discussing. To deny exemption to them, as the employees herein have asked, is to flaunt the clearly expressed legislative purpose.

When the bill as passed by the Senate went to the House of Representatives, the House Labor Committee rewrote the agricultural exemption and purposely struck the word "ordinarily" from that part of the definition relating to incidental practices. H. Rep. No. 1452, 75th Cong., 1st Sess., pp. 4-5, 11. And the word "ordinarily" never again reappeared in the definition. The bill as it was first reported by the House Labor Committee was recommitted to such Committee and on April 21, 1938, another draft of S. 2475 was reported to the House. As so reported, once again the definition of "agriculture" was broadened by adding to the incidental practices portion of the definition the activities of "preparation for market", "delivery to storage", and "delivery . . . to carriers for transportation to market". H. Rep. No. 2182, 75th Cong., 3rd Sess., p. 2. It was in this form that the bill was passed in the House.

If there had been any doubt theretofore that the hauling by a farmer of his crops to a storage place or to carriers to transport same to market was exempt, such doubt was completely eliminated by the addition of the foregoing phrases to the definition.

The two Houses of Congress then held a conference on the bill. In such conference they retained every amendment that had previously broadened the definition of "agriculture". But they went further. They broadened the exemption still more by exempting *all practices performed by*

a farmer or on a farm "in conjunction with such farming operations". 83 Cong. Rec. 9253-9254. This further broadening is additional confirmation that Congress intended to include in the exemption all of the activities we are discussing, since all of them are obviously performed by the farmer or on the farm *in conjunction with* the farming operations of growing crops. All of them are vital to the growing operation which could not otherwise take place.

When the conference report was debated in the Senate, Senator Thomas of Utah, who had succeeded Senator Black as Chairman of the Senate Committee on Education and Labor, and was chairman of the Senate conferees, stated that agriculture was exempted from the operation of the bill, that he did not know of any kind of agriculture that was included in the bill, and that the definition of agriculture was purposely made all-inclusive. 83 Cong. Rec. 9162-9163.

The legislative history will be searched in vain for any hint that Congress intended by the agricultural exemption to exempt only small farms doing their work with hand labor. On the contrary, there was discussion concerning many highly mechanized operations and it was made plain by the proponents of the legislation that such operations would be exempt if they came within the definition. 81 Cong. Rec. 7656, 7657, 7658, 7659. The legislative purpose of the agriculture exemption was to spare the farmer additional costs. Furthermore, Congress recognized that farm operations, unlike industrial operations, cannot be regulated by the clock. The coming and going of the seasons do not await the pleasure of man. Sunshine, rain, humidity and warmth are not yet subject to man's control. The time to plant and the time to harvest are determined by the whims of nature. Calves, lambs and pigs are born at all hours of the day and night. Livestock must be fed and cows must be milked each day including Saturdays and Sun-

days. Plant and animal growth continues around the clock. Successful farming demands long hours of labor on certain days and few hours of abor on others. Frost, heat, humidity, rainfall, relative day and night temperature, presence or absence of pests or the incidence of disease or illness are the practical factors governing these demands. No limitation or regulation of the farmer's hours is possible in an efficient farming operation. This factor cannot be minimized because Hawai, and possibly a few other places where the Act is applicable enjoy so equable a climate that agricultural products can be grown and harvested there throughout the year. See the testimony of various witnesses at the Joint Hearings on S. 2475 and H. R. 7200 (the related House bill) held in June, 1937, Pt. 3, 81 Congressional Record, pp. 1007, 1083, 1120-1121, 1133-1134. Senator McAdoo speaking on the floor of the Senate in support of an amendment to the definition of agriculture which would have exempted "any practices ordinarily performed by or for a farmer as an incident to such farming, including harvesting, packing, storing, or preparing for market, in the raw or natural state, any products derived from any of the above agricultural pursuits",* stated the proposition thusly:

> "These agricultural commodities are highly perishable, and the work which must be done by the packing houses and on the farms varies greatly with temperature variations. Twenty-four hours in advance one cannot know whether the crop must be moved. So, to fix rigid hours of labor in such cases would be to ruin the producers, as the crop must be handled quickly with the workers available. The broadening of the definition as I have suggested is not only directly in line with the object of the bill but will also protect the

* Senator McAdoo later withdrew his amendment when it was pointed out that an earlier amendment, already adopted by the Senate, covered the situation about which he was concerned. 81 Cong. Rec. 7927, 7928-7929.

> farmers, who, in my State at least, are engaged in a method of marketing, packing, and handling their crops which may differ from the methods employed in other States." (81 Cong. Rec. 7927.)

Whether or not the farmer's operations are mechanized, the farmer must do his work when he can, depending upon natural factors. Hence, Congress granted a complete exemption to all agriculture regardless of the mechanized character of the operation. The employees herein have ignored this Congressional purpose.

D. No Court Other Than the District Court Below Has Denied Exemption to the Activities in Question.

The judicial decisions under the Fair Labor Standards Act fully support our position that the activities listed *supra*, pp. 2 and 3 come within the agricultural exemption provided by the Act, and that it is irrelevant whether or not the farming operations are large or small, manual or mechanized. In addition to the cases cited on pages 4 and 7 *supra*, and those cited in Waialua's Brief, pp. 55 *et seq.*, the Court's attention is drawn to the following cases where the exemption was held applicable: *Jordan* v. *Stark Brothers Nurseries* (W. D. Ark. 1942), 6 Labor Cases ¶ 61,468 (employees of a nursery engaged in transporting trees from the fields where they were grown to a packing shed of the employer where they were sorted, graded, and tied into bunches for shipment); *Walling* v. *Craig*, 53 F. Supp. 479, 483 (D. Minn. 1943) (repair and reconditioning of bulldozers, tractors, and trucks devoted to agricultural activities); *Walling* v. *Peacock Corp.*, 58 F. Supp. 880, 883 (E. D. Wisc. 1943) (handling and milling of onion sets by the employees of an employer who grows the onion sets); *Redlands Foothill Groves* v. *Jacobs*, 30 F. Supp. 995, 1006 (S. D. Calif., 1940) (packing by farmer of fruit he

grows himself or bottling by a farmer of honey gathered on his farm); *Dye* v. *McIntyre Floral Co.*, 176 Tenn. 527, 144 S. W. (2d) 752 (1940) (employees of a nursery, who receive, care for, and prepare for shipment nursery products grown by the nursery or purchased from others); *Belt* v. *Hodges* (N. D. Tex., 1941), 4 Labor Cases ¶ 60,664 (employee working for a farm implement dealer trading farm implements for livestock).

E. The U. S. Department of Labor Has Consistently Held All of the Activities in Question to Be Exempt Under Section 13 (a) (6).

1. Hauling of farm's products to a storage place or a processing plant located either on or off the farm or to any market.

(i) In *Interpretative Bulletin* No. 14, issued in August, 1939, 3 *C. C. H. Labor Law Reports* ¶ 24,488, the Department of Labor construing the agricultural exemption, stated:

> "If a company has sugar cane fields and also a mill, the transportation of its own sugar cane to the mill seems an incidental practice which is included in this term" *i. e.*, "practices . . . performed by a farmer . . . as an incident to or in conjunction with such farming operations". ¶ 10 (f).

(ii) In an opinion letter written by it, the Department expressed the view that employees of an alfalfa grower, who haul the alfalfa grown by that grower to a processing plant located off the farm, are exempt under section 13 (a) (6) WHM 35:754.

(iii) In paragraph 5 (a) of *Bulletin* 14, the Department stated that the term "harvesting of any agricultural or horticultural commodities", as used in section 3 (f), includes all "operations customarily performed in connec-

tion with the removal of the crops by the farmer from their growing position in the field, greenhouse, etc."

(iv) In paragraph 10 (c) of the *Bulletin*, the Department stated as follows with respect to the term "delivery to storage" appearing in the definition of "agriculture":

> "The term 'delivery to storage' includes taking the commodities, dairy products . . . to the places where they are to be stored or held pending preparation for or delivery to market".

(v) In paragraph 10 (d) of the *Bulletin*, the Department stated as follows with respect to the term "delivery . . . to market" appearing in the definition of "agriculture":

> "The term 'delivery . . . to market' includes taking the commodities, dairy products . . . to market".

(vi) In paragraph 10 (e) of the *Bulletin*, the Department stated as follows with respect to the term "delivery . . . to carriers for transportation to market" appearing in the definition of "agriculture":

> "The term 'delivery . . . to carriers for transportation to market' includes taking the commodities, dairy products . . . to a carrier—truck, railroad, ship, etc.—for transportation by such carrier to market".

(vii) In paragraph 10 (f) of the *Bulletin*, the Department stated that besides the practices listed in the statute as being incident to or in conjunction with farming operations, there are other practices included within the exemption. As one such practice he mentioned the actual selling of the agricultural or horticultural commodities, etc.

All of the foregoing opinions relate to hauling and marketing activities performed by the farmer. The Department, however, has also recognized that if hauling activi-

ties are confined to a particular farm and consist of hauling on that farm the crops grown thereon to a storage place or processing plant located on that farm, the agricultural exemption also applies to such hauling activities. Thus in paragraph 11 of its *Bulletin* No. 14, it dealt with the term "practices . . . performed . . . on a farm as an incident to or in conjunction with such farming operations" appearing in the definition of "agriculture". It stated that with the exception of "delivery to market", which necessarily involves working off the farm, the practices described in paragraph 10 of the *Bulletin*, even if performed by employees of someone other than the farmer, would be exempt so long as they were performed on the farm. And as we have already seen, among the practices described in paragraph 10 of the *Bulletin* were those of hauling crops to a storage place, processing plant or a carrier for transportation to market.

2. Hauling by the farmer of necessary farm supplies and equipment from a nearby town to the farm.

In paragraph 10 (f) of *Bulletin* No. 14, the Department stated:

> "The truck drivers working for a farmer, who haul garbage and feed to the farm for feeding pigs, also perform practices that are exempt."

This example shows plainly that in the Department's view the hauling by the farmer's employees of agricultural supplies and equipment to the farm for use in the farming operations is exempt.

3. Operations functionally necessary to farming performed by the farmer or on the farm.

Included among such operations are the hauling of feed, fertilizer, seed, other agricultural supplies and agricultural equipment from one part of the farm to another; repair and maintenance by the farmer or on the farm of the farmer's hauling facilities, including field roads on the farm; repair by the farmer or on the farm of farm machinery, equipment and implements; and maintenance and repair by the farmer or on the farm of farm buildings and grounds and tools and implements used in the farming operation.

In paragraph 12 of *Interpretative Bulletin* No. 14, the Department said as follows:

> "We have received inquiries concerning office help —secretaries, clerks, bookkeepers, etc.—night watchmen, maintenance workers, engineers, etc., who are employed by a farmer or on a farm in connection with the activities described in the definition of 'agriculture' contained in section 3 (f). In our opinion such employees are exempt."

It is clear from this statement that the employees engaged in the above activities, all of which are not only performed in connection with the production and growing of agricultural commodities but are indispensable to such production and growing, are in the Department's opinion exempt.

In addition to the opinion expressed in paragraph 12 of *Bulletin* No. 14, the Department of Labor has expressed other opinions showing that any activities performed by the farmer or on the farm in connection with the growing and marketing of the farm's crops are exempt. Thus it has held the following activities to come within the agricultural exemption.

(i) The erection of a silo on a farm by employees of an independent contractor. *Interpretative Bulletin* No. 14, par. 11.

(ii) The removal of stumps by employees of an independent contractor from cut over timber land owned by a lumber company and now devoted by the lumber company to the growing of tung trees, where such removal and the plowing and fertilizing of the ground around the tung trees was necessary to the proper growth of the trees. WHM 35:751-752.

(iii) Sorting, grading, sizing and other practices performed on tobacco on the farm where grown by a company in the business of buying, warehousing and marketing tobacco, to which the farmer sells his tobacco. WHM 35:752-753.

(iv) Work on the farm by field men of a cannery to which the farmer had contracted to sell his crops, notwithstanding such field men from time to time report to the canning plant. 3 *C. C. H. Labor Law Reporter*, par. 25,242.203.

(v) Pre-cooling operations on the farm with respect to fruits and vegetables grown on the farm. 3 *C. C. H. Labor Law Reporter*, par. 25,242.21.

(vi) Logging operations performed by the farmer or on his farm with respect to timber blown down in a hurricane, which fallen timber presented a fire hazard and an impediment to the cultivation of the land. 3 *C. C. H. Labor Law Reporter*, par. 25,242.252.

(vii) Vining of peas grown on a farm by a vinery located thereon. 3 *C. C. H. Labor Law Reporter*, par. 25,242.281.

(viii) Tobacco stemming by a farmer or on a farm. 3 *C. C. H. Labor Law Reporter*, par. 25,242.344.

4. Preparation for market of products grown on the farm.

In paragraph 10 (b) of *Bulletin* No. 14 the Department stated:

"(b) The term 'preparation for market' must be treated differently with respect to various commodities. The following activities, among others, when performed by a farmer, seem to be included within the term:

1. Grain, seed, and forage crops.—Weighing, binning, stocking, cleaning, grading, shelling, sorting, packing and storing.

2. Fruits and vegetables.—Assembling, binning, ripening, cleaning, grading, sorting, drying, preserving, packing, storing, and canning.

3. Nuts (pecans, walnuts, peanuts, etc.).—Grading, cracking, shelling, cleaning, sorting, packing, and storing, unshelled nuts; and performing the same operations except cracking and shelling, upon the nut meats.

4. Sugar.—Manufacturing raw sugar, cane, or maple syrup and molasses.

5. Eggs.—Handling, cooling, grading, and packing.

6. Wool.—Grading and packing.

7. Dairy products.—Salting, printing, wrapping, packing, and storing butter; ripening, molding, wrapping, packing, and storing cheese; and canning or packing any other dairy product.

8. Cotton.—Weighing, ginning, and storing cotton; hulling, delinting, cleaning, sacking, and storing cottonseed.

9. Nursery stock.—Handling, wrapping, packaging, and grading.

10. Tobacco.—Handling, drying, bulking, stripping, tying, sorting, stemming, packing, and storing.

11. Livestock.—Handling and loading.

12. Poultry.—Culling, grading, cooping, and loading.

13. Honey.—Assembling, extracting, heating, ripening, removing comb, straining, cleaning, grading, weighing, blending, packing, and storing.

14. Fur.—Removing the pelt, scraping, drying, putting on boards and packing."

5. American farmers have relied upon the interpretations of the Department in regarding their various farm activities as exempt.

According to a press release issued by the Department at the same time as *Interpretative Bulletin* No. 14, the Department's interpretations of the agricultural exemption in the Act were made only after lengthy conferences with representatives of employers, employees and other interested parties. Authorities of the United States Department of Agriculture were also consulted. Much time was devoted by the Department's attorneys to a study of the legislative history of Section 13 (a) (6). The Department also had its economists make economic studies in order to assist in a proper determination of the scope of the exemption. It was only after these lengthy investigations and discussions that the Department announced its opinions on the subject. Such opinions were widely circulated through *Interpretative Bulletin* No. 14, press releases and other releases to the various labor law publications.

Once the Department's interpretations were announced, the farmers of America relied upon such interpretations and were guided by them in compensating their employees. And such interpretations as above set forth were never modified. Since they comport with the language and spirit of the exemption provisions they should be accorded the respect which the Supreme Court has said is due the Department's interpretations. *United States* v. *American Trucking Ass'n. Inc.*, 310 U. S. 534, 549. As the Supreme

Court has also said, employers may properly resort to such interpretations for guidance. *Skidmore* v. *Swift*, 323 U. S. 134, 140. They should not be lightly discarded, in favor of wholly new interpretations, of which the farmer never before heard.

F. The Imposition of the Wage and Hour Requirements of the Act with Respect to the Activities in Question Would Create a Huge Retroactive Liability for the American Farmer.

Since the language and purpose of the agricultural exemption in the Act appear clearly to grant exemption from the wage and hour requirements thereof to the activities in question, and since the courts and the Department of Labor have consistently indicated that such activities are exempt, the American farmer has naturally assumed that he is in fact exempt. If now, seventeen years after the Act has gone into effect, he is to find that contrary to all indications many of his activities are not entitled to exemption, the retroactive liability to employees, if susceptible of measurement, could be enormous and will lead to great multiplicity of suits. The relationship between farmer employer and farm employee is more than an arrangement of employment. Usually the farm employee (and often his family with him) lives upon the farm. Often he has the privilege of producing on the farm commodities for his own consumption as well as other privileges. His interest in the farm cannot be limited to some eight, nine or ten hours each day or to a forty-hour or five-day week. The hours worked vary greatly with the seasons. Also, on many days there is no way to measure the number of hours the farm employee has devoted respectively to his employer's interests and to his personal interests. In most farm operations there is no satisfactory basis for

the keeping of time records. Farm employees are actually on the farm available when needed or in the event of an emergency, around the clock. If the Fair Labor Standards Act is now to be construed so that agriculture will not be exempt the retroactive liability to employees could be so measured as to mean financial ruin to a large number of farmers.

CONCLUSION.

For the foregoing reasons, the farm activities described herein and in the record of this case should be held exempt under the definition of "agriculture" as found in the Fair Labor Standards Act.

Respectfully submitted,

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AFFIDAVIT OF SERVICE.

George E. Merker, Jr., being duly sworn, deposes and says that in compliance with paragraph 33(1) of this Court's Rules, he deposited a copy of the above Brief in the United States Post Office in the City of Chicago, properly addressed to Richard Gladstein, 240 Montgomery Street, San Francisco 4, California, and to Rufus G. Poole, 1625 K Street, N. W., Washington 6, D. C., with first-class air mail postage fully prepaid on the 18th day of February, 1955.

s/ GEORGE E. MERKER, JR.,
GEORGE E. MERKER, JR.,
Of Counsel.

Subscribed and sworn to before me this 18th day of February, 1955.

s/ FRANK BURNJAS,
Frank Burnjas, Notary Public.

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IN THE

Supreme Court of the United States

October Term, 1954

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED, *Petitioner*

v.

CIRACO MANEJA, ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

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October Term, 1954

No. .....

WAIALUA AGRICULTURAL COMPANY, LIMITED, *Petitioner*

v.

CIRACO MANEJA, ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Waialua Agricultural Company, Limited, respectfully prays that a writ of certiorari issue to review the judgment entered in the above entitled cause by the United States Court of Appeals for the Ninth Circuit, reversing the judgment entered by the District Court of the United States for the District of Hawaii.

OPINIONS BELOW

The opinion of the District Court (Appendix, pp. 24-98) is reported in 97 F. Supp. 198, and also in 10 WH Cases 287 and 20 Labor Cases ¶66,531.[1] The opinion of the

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[1] The findings of fact and conclusions of law of the District Court, which are not reported, appear at R. 190-307 and 308-320. "R." as used herein refers to pages in the record printed in the Court of Appeals, nine copies of which have been filed with the Clerk of this Court pursuant to Rule 21(4).

Court of Appeals (Appendix, pp. 1-22) is reported in 12 WH Cases 172 and 25 Labor Cases ¶68,404. The opinion of the Court of Appeals on Petitioner's petition for rehearing (Appendix, pp. 22-23) is reported in 12 WH Cases 254 and 26 Labor Cases ¶68,645. The opinion of the Court of Appeals in a prior proceeding (Appendix, pp. 98-118) is reported in 178 F. (2d) 603.

JURISDICTION

The judgment of the Court of Appeals herein was dated and entered on May 5, 1954 (Appendix, p. 22). Petitioner filed a timely petition for rehearing on June 2, 1954, which was denied by order dated and entered on June 24, 1954. *Id.*, p. 23. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion in entertaining Petitioner's declaratory judgment suit to resolve and terminate the long-standing controversy between the parties as to the application of the Fair Labor Standards Act to Respondents, who were employed by Petitioner in enumerated tasks[2] during specified work-

[2] Such tasks consisted of the following: (i) growing, cultivating, and harvesting sugarcane; (ii) hauling such sugarcane produced by Petitioner from the fields to the mill and repairing, maintaining and servicing equipment and facilities used in such hauling; (iii) grinding such sugarcane at the mill into raw sugar and molasses, and repairing, maintaining and servicing the mill and its equipment; (iv) temporarily storing, loading and shipping such raw sugar and molasses; (v) repairing and maintaining field implements; (vi) such other incidental operations as were necessary and indispensable to the foregoing; and (vii) making dwelling repairs and maintaining related domestic facilities.

weeks in 1946-1947 and who had counterclaimed under Section 16(b) of the Act for overtime compensation and damages allegedly due for such work-weeks.

2. Whether the Court of Appeals erred in reversing the District Court and in ordering dismissal of Petitioner's declaratory judgment suit on the ground the parties were in "apparent collusion" because they stipulated all material facts and separately failed to contest the constitutionality of the Act as applied to agricultural employment, where the actual controversy between the parties involved the application of certain statutory exemptions on undisputed facts and where the constitutional issue was insubstantial as shown by prior decisions of this Court.

3. In the foregoing circumstances, whether the judgment of the Court of Appeals should be reversed with directions to review on the merits the issues of statutory construction which were presented by the parties and the record and were determined by the judgment of the District Court.

STATUTORY PROVISIONS INVOLVED

The case arises under the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. §201 *et seq.*), hereinafter called 'the Act'. The pertinent provisions of the Act which are involved are as follows:

Section 3(b) defines "Commerce" to mean—

> ". . . trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof".[3]

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[3] The Fair Labor Standards Amendments of 1949 (63 Stat. 910, effective January 25, 1950) made certain changes in Sections 3(b) and 3(j). No issue is presented herein under the 1949 Amendments, however, since this proceeding is solely concerned with application of the Act to employees in specified workweeks in 1946-1947. *Infra*, pp. 5, 7-8.

Section 3(c) defines "State" to mean—

> ". . . any State of the United States or the District of Columbia or any Territory or possession of the United States".

Section 3(j) defines "Produced" to mean—

> ". . . produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State".

Section 7(a) provides that no employer shall employ any of his employees "who is engaged in commerce or in the production of goods for commerce" for a workweek longer than 40 hours—

> ". . . unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed".

Section 13(a)(6) exempts from both the wage and hour provisions of the Act "any employee employed in agriculture . . .". Section 3(f) defines "Agriculture" to include—

> ". . . farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to

storage or to market or to carriers for transportation to market."

Section 7(c) provides that—

"In the case of an employer engaged . . . in the processing of . . . sugarcane . . . into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) [the overtime provisions of the Act] shall not apply to his employees in any place of employment where he is so engaged . . ."

STATEMENT OF THE CASE

Petitioner operates a sugar plantation on the Island of Oahu, Territory of Hawaii, engaged in the growing, cultivating and harvesting of sugarcane and in the processing of such sugarcane into raw sugar and molasses (R. 31). Respondents are 40 named individuals[4] who were employed by Petitioner on its plantation between November 20, 1946 and September 14, 1947 (R. 9-10, 18, 123), performing various tasks summarized above (p. 2, note 2). Petitioner was duly substituted for a predecessor corporation which had originated the action (Appendix, p. 27).

The jurisdiction of the District Court in this case was based upon §24 and §274d of the Judicial Code as amended (now 28 U.S.C. §§1337 and 2201).

The issues presented necessitate a somewhat detailed statement of the background of this litigation, beginning with the earlier proceeding referred to in the opinion below (Appendix, p. 3, note 7).

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[4] The complaint in the District Court named 42 individuals as defendants, but two of these were held exempt from the Act during the period involved, and no appeal was taken from such holding (R. 308-310, 325, 339).

Proceedings in Previous Appeal

In April, 1947, Petitioner instituted a class action for declaratory relief in the United States District Court for the District of Hawaii, pursuant to Federal Rule 23(a) and appropriate provisions of the Judicial Code. The defendants named in that original complaint were employees of Petitioner, a union which was the collective bargaining representative of the employees and an official of that union. Petitioner prayed in that action for a declaratory judgment to resolve the controversy between the parties as to application of the overtime provisions of the Act to the employee defendants and all its other employees similarly situated.[5] The defendants filed a counterclaim under Section 16(b) of the Act, to recover unpaid overtime compensation for work performed by the employee defendants and to recover liquidated damages, costs and attorneys' fees. The District Court ordered a separate trial of the counterclaim, to take place subsequent to determination of the issues presented by the declaratory judgment suit.

Following trial of the action for declaratory judgment, the District Court entered judgment on the merits, partly for defendants and partly for Petitioner. 77 F. Supp. 480. Both parties appealed to the United States Court of Appeals for the Ninth Circuit, which reversed and remanded. (Appendix, pp. 98-118). The Court of Appeals stated that the judgment of the District Court was "a nullity" because, in the Court's view, it gave "no mandate or command" as to the employee defendants and therefore did not declare their rights with the positiveness required of a judgment; and because the judgment was deemed unsupported by sufficiently detailed and specific findings of fact (Appendix, pp. 101-103, 105, 113).

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[5] See Record in No. 588, October Term 1949, *Waialua Agricultural Company, Limited v. Ciraco Maneja, et al*, pp. 2 *et seq.*

The Court of Appeals also criticized the class representation aspects of the action, the joinder of the union and a union official as parties defendant, the stipulation of all facts, the failure to place time limits on the scope of the action, and the omission to adduce testimony by any employee defendant. (Appendix, pp. 113-116). The Court of Appeals concluded:

> "Refusal to entertain a petition for declaratory judgment is peculiarly within the discretion of the Trial Court. If a 'concrete set of facts' would be supplied to which the statute could be fitted and thereby 'an adequate and effective judgment' rendered, it would be proper to proceed. For such a judgment would satisfy the necessity of firmly founded fact findings and the elements requisite for a plea of res judicata in subsequent litigation. . . However, we leave this as a suggestion only and not as a direction. . .
> ". . . The cause is therefore remanded for further proceedings in accordance with this opinion, either for dismissal for the reason that no ground has been shown for entry of a declaratory judgment or to permit the entry of detailed findings as to each employee defendant, based upon an adequate record." (Appendix, pp. 117, 118).

This Court denied certiorari, 339 U.S. 920.

Proceedings in Present Appeal

After remand, Petitioner amended its bill of complaint, by leave of the District Court, to eliminate the class representation aspects of the suit, and to omit as parties defendant the union, the union official, and certain employees (R. 4-5). The amended complaint was filed against 42 named individuals who were employed on Petitioner's plantation in specified activities during workweeks from November 20, 1946 through September 14, 1947; and prayed for a declaratory judgment to resolve Petitioner's prolonged and continuing controversy with each of the defendants as to application of the overtime

provisions of the Act to be specified activities in the aforesaid workweeks (R. 6-14). Petitioner invoked the jurisdiction of the District Court under §24 and §274d of the Judicial Code as amended (now 28 U.S.C. §§1337, 2201), and contended in substance that all the defendants were exempt from the wage and overtime provisions of the Act during the workweeks involved by reason of the exemptions under Sections 13(a)(6) and 7(c) (R. 11-12, 13-14). Defendants filed their "Answer to Amended Complaint, and Counter-Claim, Cross-Claim, and Cross-Complaint", which continued to set up their alleged action under Section 16(b) of the Act for alleged unpaid overtime compensation, liquidated damages, costs and attorneys' fees (R. 16, 18-19, 24-26).[6] The averments of the counterclaim were put in issue by Petitioner's "Reply and Answer to Counter-Claim, Cross-Claim, and Cross-Complaint" (R. 20-24).

The District Court entered an order under Federal Rule 42(a) requiring that all claims and issues presented in both suit and counterclaim be heard and tried jointly (R. 5-6; Appendix, p. 26). Upon the joint trial, a precise record was adduced showing with respect to each Respondent the particular workweeks worked by him during the period of time covered by the litigation; the number of hours worked by him in each such workweek; his compensation in each such workweek, including the amount of overtime compensation paid him and the number of hours for which such overtime compensation was paid; and the duties performed by him in each such workweek. Furthermore, while all material facts were set forth in a lengthy Stipulation of the parties,[7] 22 of the 42 de-

[6] The counterclaim stated that it was asserted under the Fair Labor Standards Act (R. 18). The District Court stated that the counterclaim was filed under Section 16(b) of the Act. Appendix, p. 26. The allegations of the counterclaim and the prayer therein clearly establish it is an action under Section 16(b) of the Act.

[7] See pp. 32-864 of the original transcript of record herein, certified by the Court of Appeals under Rule 21(1).

fendants testified orally, and all supported the truth and accuracy of the Stipulation except in certain minor respects (E.g. R. 409-410, 423-424, 434-435, 446-447, 458-459; see also R. 615-617, 619, 620-621). In such minor respects the Stipulation was thereafter amended by the parties to conform with the oral testimony.[8] Thereafter, the parties briefed and argued their opposing interpretations of the statutory provisions involved.

The District Court entered detailed findings of fact and conclusions of law with respect to all claims and issues presented in the trial of the consolidated actions (R. 190 *et seq.*, 308 *et seq.*). Such findings and conclusions showed as to each Respondent, in each of the workweeks in controversy during the period of time covered by the litigation, a detailed description of the work performed by the Respondent, the number of hours worked by him, his regular hourly rate of pay, whether he had received overtime compensation for hours of work in excess of 40,[9] whether he was exempt under either Section 13(a)(6) or Section 7(e), and the amount of unpaid overtime compensation, if any, which Petitioner owed him.[10] The District Court thereafter entered a single judgment (R. 321 *et seq.*) entitled "Declaratory Judgment and Judgment

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[8] See Amendment to Stipulation filed September 5, 1950, pp. 2026-2034 of the original certified transcript of record filed herein under Rule 21(1). See also R. 618-619.

[9] In the case of some Respondents who received overtime compensation for hours of work in excess of 40 per week in certain workweeks, there is a controversy between the parties as to whether Petitioner was obligated under the Act to pay such overtime, E.g., Hernandez (R. 311), Cumlat (R. 315) and Hamamoto (R. 318).

[10] Petitioner paid overtime to all Respondents for hours worked by them in excess of 48 in a workweek, and therefore the recovery of overtime pay sought by Respondents and involved herein is limited to hours in excess of 40 per week, up to and including 48. See Appendix, p. 21, note 42. Petitioner paid overtime, for hours in excess of 48 in a week, pursuant to the applicable collective bargaining contract (R. 141, 143).

Awarding Defendants Overtime Compensation, Liquidated Damages, Costs, and Attorney's Fees". The Judgment was divided into two parts. Part I was called "Declaratory Judgment" (R. 322) and Part II was entitled "Judgment Awarding Defendants Overtime Compensation, Liquidated Damages, Costs, and Attorneys' Fees" (R. 336). Thus the District Court's judgment disposed of all claims and issues raised in Petitioner's suit for declaratory judgment and in Respondents' counterclaim under Section 16(b) of the Act.

The Court of Appeals, while recognizing that its earlier instructions and suggestions had been followed on remand (Appendix, pp. 3-4, 7), nevertheless reversed the judgment of the District Court for "error in approach" (Appendix, p. 2), and directed that "the proceeding be dismissed for abuse of discretion in entertaining a petition for declaratory judgment here and attempting to settle a question of jurisdictional and constitutional construction therein". (Appendix, pp. 16-17). The Court then filed its judgment providing in general terms that "the judgment of the said District Court in this cause be, and hereby is reversed for proceedings in accordance with the opinion of this court" (Appendix, p. 22).

In substance the Court of Appeals' opinion stated that Petitioner and Respondents were in apparent collusion because they had stipulated all material facts, and because neither had contested the constitutional validity of the Act under the commerce clause as applied to the agricultural employment of Respondents here involved (Appendix, pp. 2, 4, 10, 12, 18, 19, 23). In consequence, the Court of Appeals held that the District Court had abused its discretion in entertaining Petitioner's suit for declaratory judgment, and ordered that that suit be dismissed.

Petitioner thereupon on June 2, 1954 filed in the Court of Appeals its petition for rehearing, praying that the opinion and judgment be modified to clarify the Court's

disposition of the counterclaim in relation to the dismissal of the complaint. The counterclaim involved important issues affecting both parties that had been fully tried and determined in the District Court and were fully briefed and argued in the Court of Appeals. Petitioner also urged that dismissal of the complaint should not affect disposition of the counterclaim, since the District Court had jurisdiction over the latter, independently of the former, under Section 16(b) of the Act and 28 U.S.C. §1337. Petitioner urged that the Federal Rules of Civil Procedure as a whole oppose piecemeal disposition; that such Rules direct that an appropriate judgment be entered on the substance of an action irrespective of any technical errors in legal theory or approach or in demand for judgment (Rules 15(b) and 54(c)); and that the courts had no discretion to refuse to entertain the counterclaim. Specifically the petition for rehearing prayed that the opinion and judgment be amended to direct that the counterclaim be dismissed on the merits, inasmuch as the opinion of the Court of Appeals manifested its view that each Respondent was totally exempt from the Act under Section 13(a)(6) in each workweek covered by the counterclaim. In the alternative, the petition for rehearing prayed that if the Court of Appeals concluded that the counterclaim should be dismissed for reasons other than on the merits, then the opinion and judgment should be amended so as unequivocally to direct such dismissal as a basis for further proceedings. On June 24, 1954 the Court of Appeals denied the petition for rehearing. Its memorandum opinion stated that, "The Court construes what is called the cross-complaint as a petition also for declaratory relief. This is left undismissed by this Court". As to further proceedings therein, however, the Court's opinion stated that, "The parties and the Trial Court . . . should be mindful of the fact that this Court has held that the entire cause was tainted by apparent collusion between the parties in the attempt to obtain an advisory opinion upon constitutional questions." (Appendix, p. 23).

REASONS FOR GRANTING THE WRIT

In substance, Petitioner prays for a writ of certiorari to reverse the erroneous judgment of the Court of Appeals, and to direct that court to review on the merits the important issues of statutory construction which are presented by the parties and the record and were determined by the judgment of the District Court. Petitioner is not seeking review and decision by this Court on the merits of the District Court's judgment which the Court of Appeals reversed on other grounds.

I.

IN DIRECTING DISMISSAL OF PETITIONER'S SUIT FOR DECLARATORY RELIEF, THE COURT BELOW HAS DECIDED A FEDERAL QUESTION IN A WAY CONFLICTING WITH APPLICABLE DECISIONS OF THIS COURT.

1. Petitioner's suit for declaratory relief presents an actual and important controversy concerning the legal relations between Petitioner and Respondents under the Act, which would be conclusively terminated by a declaratory judgment. The pendency of the counterclaim herein, which the court below declined to dismiss (Appendix, p. 23), is itself conclusive evidence of the serious, adversary, immediate and continuing controversy between the parties concerning the interpretation and application of the Act to particular employees engaged in clearly defined tasks during specified workweeks.[11] See also pp. 17-18, *infra*.

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[11] E.g., The District Court, in *Tennessee Coal, Iron & R. Co v. Muscoda Local*, pointed out:

> "Because many persons in the class of the defendants are making actual claims upon the several plaintiffs for overtime compensation, based on the contention made by defendants in these actions, a justiciable controversy is presented." 40 F. Supp. 4, 6 (N.D. Ala.) *aff'd.* 135 F. (2d) 320 and 137 F. (2d) 176 (C.C.A. 5), *aff'd.* 321 U. S. 590.

The circumstances of the instant case thus render inapplicable the precedents cited by the court below in which declaratory relief was refused because the suit was either moot, premature, or otherwise advisory in nature. (Appendix, p. 21, note 41, referring to the court's earlier opinion, Appendix, pp. 116-118, notes 16-28). Rather, under applicable decisions of this Court, it was manifest error for the Court of Appeals to reverse the judgment of the District Court for alleged abuse of discretion in entertaining Petitioner's suit for declaratory relief. See *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 239-242 (reversing both courts below); *Currin v. Wallace*, 306 U.S. 1, 9; *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 272-274 (reversing both courts below); *Altvater v. Freeman*, 319 U.S. 359, 363-366 (reversing Court of Appeals); *Tunstall v. Brotherhood*, 323 U.S. 210, 213-214 (reversing both courts below); *Railway Mail Ass'n. v. Corsi*, 326 U.S. 88, 93; *Order of Railway Conductors v. Swan*, 329 U.S. 520; *United Public Workers v. Mitchell*, 330 U.S. 75, 93; *Hilton v. Sullivan*, 334 U.S. 323; *McGrath v. Kristensen*, 340 U.S. 162, 169-171; *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 140-142 (reversing both courts below); 28 U.S.C. §2201; Rule 57, Federal Rules of Civ. Proc. 28 U.S.C.A.; Notes of Advisory Committee, *Id.* This Court has repeatedly approved application of declaratory judgment procedure to controversies concerning interpretation and application of the Fair Labor Standards Act. See *Tennessee Coal, Iron & R. Co. v. Muscoda Local*, 321 U.S. 590, 592; *Jewell Ridge Coal Corporation v. Local #6167*, 325 U.S. 161. To the same effect are repeated rulings by the lower Federal courts. E.g., *Bowie v. Claiborne*, (D.P. Rico) 1 Labor Cases ¶18,443, *aff'd. sub. nom. Bowie v. Gonzalez*, 117 F.(2d) 11 (C.C.A. 1); *Sunshine Mining Co. v. Carver*, 34 F. Supp. 274 (D. Idaho); *Green Head Bit & Supply Co. v. Hendricks*, 49 F. Supp. 698 (W.D. Okla.).

2. The Court of Appeals wholly misconceived the nature of the action when it directed dismissal and stated that "the entire cause was tainted by apparent collusion between the parties in the attempt to obtain an advisory opinion upon constitutional questions" (Appendix, p. 23).

The controversy between the parties, as presented by the record, briefs, and oral argument, revolved around the construction of the Act rather than the constitutional power of Congress over agricultural employment. Contrary to the implication of the court below, there was no agreement between the parties, by stipulation or otherwise, as to conclusions of law or constitutional power. The parties have been vigorous antagonists throughout the litigation, and neither Petitioner nor Respondents conceded any issue of fact or law which would have foreclosed any tenable argument supporting their respective positions.[12]

Nor can any contrary inference be drawn from the fact that counsel for both parties, as well as counsel for the Department of Labor (which appeared *amicus curiae*), separately and independently assumed in trial and argument that all the employees involved (other than those engaged in making dwelling repairs and maintaining re-

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[12] See particularly the Amended Complaint, paragraphs 10-13, R. 10-13); Answer and Counterclaim, paragraph V (R. 18); Reply and Answer to Counterclaim (R. 20-24); Notice of Appeal (R. 339); Statement of Points on Appeal (R. 673, 675).

The Court of Appeals' statements that the parties were in "agreement" or "apparent collusion" are especially inappropriate in view of notorious facts within the judicial notice of that court; namely, the intense antagonism, bitterness and strife that have unfortunately attended the relationship between the union here involved and Hawaiian employers for many years. The fact that this proceeding is decisive of similar problems affecting all Hawaiian sugar plantations (and large segments of continental agriculture) contributes to the desirability and importance of declaratory relief as prayed by the Petitioner. See *Stern and Gressman, Supreme Court Practice* (2d ed.) pp. 199-200.

lated domestic facilities)[13] were engaged in the production of goods for commerce. That assumption was made in good faith by the respective parties and was consistent with the applicable decisions of this Court. See *Farmers Reservoir Co. v. McComb*, 337 U.S. 755, 759. All parties rightly recognized that the constitutional power of Congress under the commerce clause reached the production of agricultural commodities destined for interstate movement. See *Wickard v. Filburn*, 317 U.S. 111, 118; *Santa Cruz Fruit Packing Co. v. Labor Board*, 303 U.S. 453; *Mandeville Farms v. Sugar Co.*, 334 U.S. 219, 236-237.

Petitioner had contended below, and the Court of Appeals' opinion specifically agreed, that all the employment here involved is exempt from the Act in view of the broad agricultural exemption in Sections 3(f) and 13(a)(6). The Court of Appeals therefore did not find it necessary to consider Petitioner's further contention that any employees not exempt under Section 13(a)(6) were exempt under the year-round exemption from overtime requirements for processing of sugarcane in Section 7(c). In any event Petitioner's declaratory judgment suit was properly founded upon the appropriate interpretation of these exemptions under the Act of Congress, rather than upon the erroneous constitutional argument adopted by the court below as the basis for its erroneous conclusion that

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[13] Petitioner contended that employees engaged in making dwelling repairs and maintaining related domestic facilities were not engaged in commerce or in the production of goods for commerce, within the meaning of the Act (R. 11-12). *Cf. Wilson v. Reconstruction Finance Corporation*, 158 F. (2d) 564 (C.C.A. 5), *cert. den.* 331 U.S. 810; *Morris v. Beaumont Manufacturing Co.*, 84 F. Supp. 909 (W.D. S.C.); *Coomer v. Durham*, 93 F. Supp. 526 (W.D. Va.). The Court of Appeals itself recognized that there was no agreement of the parties concerning application of the commerce coverage of the Act to this category of employees. Appendix, p. 2, note 2. Petitioner further contended, entirely apart from the commerce coverage of the Act, that these employees, as well as all others involved in the litigation, were exempt under Sections 13(a)(6) or Section 7(c) of the Act (R. 11, 12).

Petitioner had committed an "error in approach" which justified dismissal of its suit for declaratory judgment.

Manifestly the Court of Appeals should have addressed itself to the issues of statutory construction, under the established doctrine that federal courts will not pass upon constitutional questions unless unavoidable. *Alma Motor Co. v. Timken-Detroit Axle Co.*, 329 U.S. 129, 136-137. By injecting a constitutional issue not necessary to the decision or presented by the parties or the record, the Court of Appeals demonstrated a fundamental hostility to declaratory judgment procedure concerning statutory construction. The arbitrary refusal of declaratory relief in appropriate cases is wholly contrary to the intent of Congress as well as the repeated decisions of this Court in similar circumstances.[14]

3. The declaratory judgment suit was not rendered collusive because the parties stipulated to most of the facts. Where, as here, the parties have adverse interests in an actual controversy, "it is . . . a judicial act to give judgment" on the legal relationship which "the court finds to be established by stipulated facts". See *Pope v. United States*, 323 U.S. 1, 12 and cases there cited; *Tennessee*

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[14] In *Tennessee Coal, Iron & R. Co. v. Muscoda Local*, the Court of Appeals for the Fifth Circuit stated concerning the Declaratory Judgment Act:

> "This is a procedural statute that provides an additional remedy for use in cases of which the federal courts already have jurisdiction. It should be given a liberal construction and application. A court may not arbitrarily refuse to exercise such jurisdiction in a proper case, but must decide the issue presented in accordance with the law and the evidence. The procedure is expressly provided for in number 57 of the Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c, and the technicalities of equity practice do not prevail therein. The courts are limited in their jurisdiction to cases of actual controversy of a justiciable nature, thus excluding an advisory decree." 137 F. (2d) 176, 179, *aff'd.* 321 U.S. 590.

See also *Western Electric Co. v. Hammond*, 135 F.(2d) 283, 289 (C.C.A. 1).

Coal, Iron & R. Co. v. *Muscoda Local*, 137 F.(2d) 176, 179-180, *aff'd* 321 U.S. 590; *Federal Trade Commission* v. *Pacific States Paper Trade Ass'n.*, 273 U.S. 52, 60-63. The policy favoring stipulation of undisputed facts is embodied in the Federal Rules of Civil Procedure (Rule 16, 28 U.S.C.A.); and this practice is especially appropriate in a declaratory judgment suit which "often involves only an issue of law on undisputed or relatively undisputed facts". See Notes of Advisory Committee, Rule 57, Fed. Rules Civ. Proc. 28 U.S.C.A.[15]

The existence of an adversary controversy, and the absence of any collusion between the parties, is apparent from examination of the Petitioner's Amended Complaint (R. 10-14); Respondents' Answer and Counterclaim (R. 16, 18-19); Petitioner's Reply (R. 20-24); the Stipulation entered into by the parties (R. 37); Petitioner's Statement of Points on Appeal (R. 673 *et seq.*); and other detailed contentions of the parties in the two courts below. Most important, the District Court, which twice tried the issues herein, recognized the existence of the controversy (R. 619-620) and made findings of fact to that effect. Appendix, pp. 25-26; *cf. Guardian Life Ins. Co. v. Kortz*, 151 F.(2d) 582, 586 (C.C.A. 10). The District Court's conclu-

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[15] The cases cited by the court below (*supra* p. 13) are not relevant. E.g., in *United States v. Johnson*, 319 U.S. 302, plaintiff had brought in a fictitious name a suit instituted at defendant's request. The plaintiff had not employed or even met the attorney of record who appeared in his behalf; had not read the complaint filed in his name; had no knowledge of the amount of the judgment sought until advised in the local press; and had filed no brief. In *Lord v. Veazie*, 8 How. 251, there was no adversary relationship between the parties. This Court said, however, that stipulations by adverse parties of facts known to be true "far from being objects of censure, are always approved and encouraged, because they facilitate clearly the administration of justice". 8 How. at 255. In *Ward v. Alsup*, 100 Tenn. 619, 46 S.W. 573, also cited by the Court of Appeals, the state court indicated in a *dictum* that the suit would be fictitious if its main object were to affect third persons rather than to redress the plaintiff's grievance.

sion is entitled to great weight, and the Court of Appeals' reversal thereof was not founded upon any tenable basis in the record.

II.

THE JUDGMENT OF THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

1. In denying the petition for rehearing, the Court of Appeals called attention to "considerations of expense in futile proceedings" (Appendix, p. 23). From the outset of this complex litigation in 1947, Petitioner has indeed been mindful of such considerations; and it is one of the acknowledged advantages of declaratory judgment suits to avoid piecemeal, dilatory and expensive litigation. Cf. cases cited *supra*, p. 13; and see *Davis v. American Foundry Equipment Company*, 94 F.(2d) 441, 442 (C.C.A. 7); *Inland Mutual Insurance Co. v. Eastern Motor Lines*, 119 F. Supp. 344, 349 (W.D.S.C.). The course of proceedings hereinabove described (pp. 7-10) demonstrates the care, attention and effort expended by Petitioner in complying with every requirement laid down by the Court of Appeals in its opinion on the first appeal. That opinion, while criticizing the declaratory judgment suit in a number of particulars, did not direct its dismissal. Recognizing the discretion which rested in the District Court to entertain the action, the Court of Appeals on that occasion remanded for further proceedings including, as one suggested alternative, "the entry of detailed findings as to each employee defendant, based upon an adequate record". *Supra*, p. 7. The entire proceeding on remand manifested the most meticulous compliance by the parties and the District Court with every requirement indicated in the first opinion

of the Court of Appeals.[16] Nowhere in its first opinion did the court below express or even imply that such compliance would eventuate in a second reversal upon the entirely new basis of alleged "collusion" advanced in the second opinion; namely that the parties had failed to raise the constitutional question.

Petitioner is constrained to conclude, and respectfully submits, that the expense of futile proceedings must be attributed to the error of the Court of Appeals in departing so markedly from the usual course of judicial proceedings as to require the exercise of this Court's power of supervision.

In the circumstances disclosed by the record, this Court should reverse the judgment of the Court of Appeals and direct that it review on the merits the District Court's judgment in Petitioner's suit for declaratory relief. See *Altvater v. Freeman* and other cases cited *supra* p. 13; *cf. Labor Board v. Donnelly Garment Co.*, 330 U.S. 219, 226-228.

2. The counterclaim arose out of the same transaction or occurrence as the suit for declaratory relief. The District Court had jurisdiction over the counterclaim entirely independent of its jurisdiction over the declaratory judgment suit; and the Court of Appeals therefore erred in failing to review on the merits the District Court's adjudication of the counterclaim, after reversing the money judgment awarded by the District Court. See *Altvater v.*

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[16] Thus: (1) the judgment of the District Court gave a mandate as to each Respondent; (2) detailed and specific findings of fact were entered as to each such Respondent; (3) the action was limited in time to the period November 20, 1946 to and including September 14, 1947; (4) the class representation aspects of the action were eliminated; (5) the union and union official were dropped as parties defendant; (6) a single trial was had of both the Petitioner's suit for declaratory judgment and Respondents' counterclaim under Section 16(b) of the Act; (7) twenty-two of the forty-two respondents testified orally in the action.

Freeman, 319 U.S. 359, 363-364, 366; *Pioche-Mines Consol. Inc. v. Fidelity-Phila. Trust Co.*, 206 F.(2d) 336 (C.C.A. 9); *Isenberg v. Biddle*, 125 F.(2d) 741, 743 (App. D.C.); *Lion Mfg. Corp. v. Chicago Flexible Shaft Co.*, 106 F.(2d) 930, 933 (C.C.A. 7); *Vidal v. South American Securities Co.*, 276 Fed. 855, 874 (C.C.A. 2); *U.S. Industrial Chemicals Inc. v. Carbide & Carbon Corp.*, 52 F.Supp. 164, 166 (S.D. N.Y.). This erroneous disposition by the Court of Appeals involves important issues directly affecting the Petitioner,—issues which have been tried and determined in the District Court, which have been fully briefed and argued in the Court of Appeals, and which nevertheless have not been disposed of by opinion and judgment of that court.

The Federal Rules of Civil Procedure as a whole frown upon piecemeal disposition of actions. *Eastern Transportation Co. v. United States*, 159 F.(2d) 349, 351-352 (C.C.A. 2); *Manchester Gardens v. Great West Life Ass. Co.*, 205 F.(2d) 872, 875 (App. D.C.); *Gold Seal Co. v. Weeks*, 209 F.(2d) 802 (App. D.C.); *3 Moore, Federal Practice* (2d ed.), pp. 46-47. Federal Rules 15(b) and 54(c) also direct that an appropriate judgment be entered on the substance of an action irrespective of any technical errors in legal theory or approach or in demand for judgment. *Atwater v. North American Coal Corp.*, 111 F.(2d) 125, 126 (C.C.A. 2); *Gins v. Mauser Plumbing Supply Co.*, 148 F.(2d) 974, 976 (C.C.A. 2); *Blazer v. Black*, 196 F.(2d) 139, 147 (C.C.A. 10); *American Universal Ins. Co. v. Sterling*, 203 F.(2d) 159, 164 (C.C.A. 3).

The court below recognized that each of the Respondents had a remedy at law by damage suit under Section 16(b) of the Act (Appendix, p. 21, note 44), but the court overlooked that the counterclaim in the record before it was based on precisely that right of action. *Supra*, p. 8. When this was called to the court's attention on rehearing, it proceeded to construe the counterclaim "as a petition

also for declaratory relief" (Appendix, p. 23), although the counterclaim contained no such prayer.

The Court of Appeals erred in thus refusing to review on the merits the District Court's adjudication of the counterclaim after it had reversed the District Court's money judgment for Respondents thereunder.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1954

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED, *Petitioner*

v.

CIRACO MANEJA, ET AL., *Respondents*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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In The

Supreme Court of the United States

October Term, 1954

No. .....

Waialua Agricultural Company, Limited, *Petitioner*

v.

Ciraco Maneja, et al., *Respondents*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Opinion of United States Court of Appeals for the Ninth Circuit, Dated May 5, 1954

No. 13,114—Opinion—May 5, 1954

Waialua Agricultural Company, Limited, *Appellant*,

vs.

Ciraco Maneja, et al., *Appellees*.

Appeal from the United States District Court for the District of Hawaii

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Before HEALY, BONE, and FEE, Circuit Judges

JAMES ALGER FEE, Circuit Judge:

This case must be reversed for error in approach. Waialua initiated the procedure by petition for declaratory judgment. The trial court, misled by the nature of the cause and the attitudes of the parties, decided the wrong issue.

The status of Waialua was tried out. It was contended by Waialua that it was engaged in agriculture, and therefore all of its employees were exempt from application of the statute. The trial court, in its first declaration, which was reversed for lack of findings, and in its present declaration and judgment, took the converse position. It has held that Wailua, through corporate affiliations, interlocking directorates and factor relationships, was a manufacturer of refined sugar on the mainland, and there engaged in interstate and foreign commerce.[1]

By agreement of all parties and the Department of Labor, that Court finds that all employees of Waialua except one group[2] "are engaged in commerce or in the production of goods for commerce." Therefore, it was concluded that every employee of Waialua on Oahu, Territory of Hawaii, was subject to the drastic provisions of the Act for each work week in which he did not spend every employed hour in an activity such as planting, irrigating, cultivating, ratooning or cutting and loading cane.[3] In pursuit of the fallacy so induced, the Court refused to describe each employee who harvested the crop by reduc-

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[1] The trial court found that Waialua does not "directly engage in any sugar refining operation." 97 F.Supp. 198, 203.

[2] This group is composed of employees who perform the work of repairing and maintaining dwelling houses in the mill village. These employees the Court found, independently of agreement, were employed in the production of goods for commerce. 97 F. Supp. 198, 226-232.

[3] These activities are particularized by the trial court at 97 F.Supp. 198, 219, paragraph [3].

ing cane to raw sugar and molasses, an operation essential to its preservation, as an agricultural worker.[4]

Thus the trial court did not give effect to the language of the statute which excludes from its operation anyone "employed in agriculture"[5] and defines "agriculture" to include "farming in all its branches and among other things * * * the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural and horticultural commodities * * * and any practices * * * performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."[6]

After a remand upon a previous appeal,[7] on motion of Waialua, the International Union was eliminated and its Secretary, Jack Hall, stricken from the defendants. The representative character of the original proceeding was

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[4] The trial court, disregarding an express direction of this Court, allowed the processing exemption, which is beside the point. The activity was excluded by the terms of the Act. In its previous opinion, 178 F.2d 603, this Court stated: "Not only was it the desire to exempt processing as a part of the harvesting done by a farmer or on a farm, but also processing done by a third party. These provisions are not alternative or mutually exclusive, and should be liberally construed for the reasons given by this Court in McComb vs. Hunt Foods, Inc., 9 Cir., 167 F.2d 905, 908." (page 609). The processing exemption, 29 U.S.C.A. § 207(c), is directed primarily toward that "processing done by a third party." See also Walling vs. Peacock Corporation, 58 F.Supp. 880, 883; Redlands Foothill Groves vs. Jacobs, 30 F.Supp. 995, 1006.

[5] 29 U.S.C.A. § 213(a)(6). "* * the raising and harvesting of sugar were specifically given consideration by Congress on account of the immense importance to the economy of this country as a whole." Waialua Agricultural Company, Limited vs. Maneja, 9 Cir., 178 F.2d 603, 608, paragraph [6-8].

[6] 29 U.S.C.A. § 203(f).

[7] Waialua Agricultural Company, Limited vs. Maneja, 9 Cir., 178 F.2d 603, cert. den., 339 U.S. 920.

also abandoned. The individual workers, most of whom were retainers and dependents of Waialua although union members, were permitted to file a so-called cross-complaint, praying for relief in sums of money, and this time several of these individual employees gave testimony as to the kind of work each did. None of these devices, adopted to meet criticism of this Court, changed the fundamental character of the proceeding. The individual employee cross-complainants still seem "pawns in this battle of the demi-gods." Waialua seems to act to preserve relations with the Union and a federal bureau, as a policy. Practically all facts are agreed and, as above noted, constitutional and jurisdictional conclusions as to coverage were accepted. Thereby, emphasis was placed upon the wrong problems.[8] This conjugation by consent removes the cause from the class of "cases and controversies" and is an abuse of declaratory judgment procedure. The only bitterly partisan litigant is an executive bureau not named in the record as a party. Notwithstanding a plain warning of this Court upon the last appeal that such evidence was impertinent to the whole question as to whether the individual employee was an "agricultural worker," the parties introduced at this trial and the Court adopted as a basis for decision two treatises. These were entitled, respectively, "Labor in the Territory of Hawaii, 1939" [9] and "The Economy of Hawaii in 1947," [10] studies made under the supervision of a department of the government,

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[8] The suggestion of the trial court in one opinion that the exclusion of agriculture would free farmers from the "oppressive child labor" provisions of the Act need not be too much regarded. Such a problem does not exist. And we have come a long way from sound thinking in America if it be suggested that a farm boy should not work on a farm. Of course, the bureaucrats could take much better care of him.

[9] James H. Shoemaker, U.S. Bureau of Labor Statistics, United States Government Printing Office, 1940.

[10] Bulletin No. 926, United States Department of Labor, United States Government Printing Office, 1948.

which, as noted above, took an active part not only in the trial court, but on both appeals.

Thus a false issue was created. Instead of concern with the question of who was employed in agriculture, the attention of the Court was deflected to a consideration of membership of Waialua in a non-profit sugar refining and marketing cooperative called "California & Hawaiian Sugar Refining Corporation, Ltd.", of California, which was engaged in the manufacturing business of refining raw sugar, marketing the product, and transporting the refined sugar to the consumers.[11] But all the activities of the latter were carried on upon the mainland. No one of

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[11] A similar contention was made by the Administrator of the Wage and Hour Division, as a bitterly partisan litigant under the guise of amicus curiae in Miller Hatcheries, Inc. vs. Boyer, 8 Cir., 131 F.2d 283, 285, where Judge Johnsen, in an illuminating opinion, held that employees of a commercial hatchery were excluded because "employed in agriculture." There the Administrator contended "that the hatching of baby chicks by a commercial hatchery is an industrialized and highly specialized activity which does not itself have any direct connection with 'farming operations'; that the economic function of such an urban establishment is completely disassociated from the agricultural activities," that "thus transposed from a farm to a commercial establishment it ceases to be a technical farming activity" and that "the attributes of farm labor which justify its exclusion * * * ought not to be regarded" as extending to a commercial operation.

This compares with the contentions of the Administrator here: "To accomplish its purpose of producing raw sugar, appellant plainly engages in many separate and distinct enterprises appropriate to that end, including manufacturing and transportation, as well as farming. This integration of business operations neither conceals the essential nonagricultural character of appellant's manufacturing functions nor submerges the fact that appellant, in operating a hybrid type of business, has assumed the functions of a manufacturer and a railroad company, as well as those of a farmer. * * * Just as the chain store cannot obtain the retail exemption for its central office and warehouse merely because the services of those units are restricted to exempt retail outlets, so here, appellant cannot achieve exemption for its separate manufacturing function and its railroad activities simply because it utilizes them only for the products of its farm."

its employees is here involved. None of the workers of Waialua was employed by the cooperative.

If the pertinent question of employment in farming had been considered instead, then the language of the statute defining such employees would have been given effect.[12]

The decisions of this Court bear out the breadth of the exclusion of agricultural workers. Dofflemyer vs. National Labor Relations Board, 9 Cir., 206 F.2d 813 (Judge Healy) shows that technical distinctions should not be used to circumscribe the words "farmer" and "farm" as used in the Act. The necessity for immediate processing of a farm product is of great force in emphasizing the scope of the agricultural exclusion, according to Judge Bone, writing for the majority in McComb vs. Hunt Foods, 9 Cir., 167 F.2d 905, where the interpretations of three different district courts in widely separated agricultural areas of the mainland are followed. There the Court said:

> "'The policy of protection to the growers of "perishable and seasonal fresh fruits" is of as much force as that of the protection of general industrial workers. The objective of a uniform rule for hours and wages in manufacturing should not be allowed to prevail over the paramount necessity of garnering and preserving fruits and grains when Congress equally recognized both in the Act. The hypertechnical reasoning concerning "exceptions" and "exemptions" has no place here. A direct expression of non-applicability constitutes neither.'

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[12] In an interesting case parallel to this in another food supplying industry, the Court of Appeals of the Third Circuit held, in an able opinion by Judge Maris, that all employees necessary to carrying on a fishery and fish processing activities were "exempt by the plain language of Section 13(a)(5) of the Act." McComb vs. Consolidated Fisheries Co., 3 Cir., 174 F.2d 74, 78. It should be marked with red on the margin of this case that the Administrator was there contending that all employees of a farmer, including those engaged in first processing, were excluded by the language, but that the exemption to fish processors was much narrower.

> "This is but another way of saying that if the business operations claimed to be exempt are found to fall within the exempt classification, the statute is, as to them, a 'remedial' statute. We agree with the lower court that no formalistic characterization should be permitted in dealing with any of these clauses since the plain intention of the statute should be carried out." (page 906).

The trial court was thus in error in requiring Waialua to prove beyond peradventure the affirmative of the proposition that each worker was employed in agriculture and in activities by a farmer and on a farm. By an unwarrantedly strict construction, Waialua was required to establish exemptions beyond a reasonable doubt, as though it were negativing a jurisdictional proviso in an indictment.

Upon the former appeal, to which reference has been made, the Court questioned the aptness of the declaratory proceeding, but remanded because the findings were not sufficient to support any judgment. The findings before us are now meticulous and exact as to the hours and type of work performed by each worker defendant during each work week in question. However, the trial court failed to find many vital facts which the record, as we view it, bears out, and made many findings which are clearly erroneous. For these reasons alone, the cause must be reversed.

A vital finding contains the implication that sugar cane can be stored in Hawaii three or four days without spoiling.[13] In fact, a delay of three or four hours is apparently deleterious, and for best results the cane, after cutting, should move continuously from field to crushing mill.[14]

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[13] 97 F.Supp. 198, 203.

[14] "Sugar cane is highly perishable * * * and starts to deteriorate immediately after harvesting. To avoid serious losses, it must be processed into sugar, syrup or molasses within a few hours after it has been burned or severed from the ground." Stipulation of Fact, Part I, § 4.

The Court concludes that no worker at the crushing mill is employed in agriculture but is exempt only insofar as he assists in first processing. If necessity for immediate treatment for preservation had been found, the Court would have been impelled to find an employee at the mill was engaged in "harvesting" an agricultural product. The Court found transportation of cane from fields to cars was farming, but carrying of cane on cars drawn by a locomotive from loading points to the mill was "railroading" and transportation in commerce. Again, the railroad and its crew performed no other kinds of transportation, and therefore what each did was "harvesting." The complete operation was vitally necessary to put the crop into a form in which it would not spoil and, as "raw sugar," could be transported to the mainland for manufacturing. Any activity of any employee which assisted in this operation, whether furnishing power to the mill or hauling cane from field to mill, fell within the express word "harvesting" used in the enactment. Such a finding was not made. Those which were made were erroneous.

Even if it could have been concluded that these activities were not "harvesting," they were nevertheless carried on by a "farmer."[15] Furthermore, such activities were performed "on a farm." On either of these independent grounds, workers so employed were excluded by the enactment.

But the Court failed to find that Waialua was a farmer.[16] The record and stipulations show conclusively that

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[15] Employees of a "farmer" who work in or out of a store, transporting, packing and selling plants in connection with a wholesale and retail outlet located in a city four miles from the "farm" are held to be employed in agriculture. Walling vs. Rocklin, 8 Cir., 132 F.2d 3. "The raw products were at most being prepared for market in connection with the business of producing them." (page 6).

[16] The trial court held, contrary to the stipulations and evidence, that Waialua "assumed a variety of functions, including those of farmer, carrier, manufacturer, shipper, and operator of village communities." 97 F.Supp. 198, 218.

all activities of Waialua upon the island of Oahu were concerned with growing, cultivating and harvesting sugar cane. It should have been found that Waialua was a farmer, and all workers performing functions for it on the plantation were employees of a farmer. It should have been found that transportation of cane to the mill and the crushing and drying of the raw sugar therefrom were activities performed by a farmer as incidents to and in conjunction with farming operations, including harvesting, preparation for market and delivery to storage. Findings of fact which have contrary implications are clearly erroneous.

The trial court also found neither railroad nor crushing mill were "on a farm."[17] The admissions, maps and other exhibits indicate all the activities of employees of Waialua were carried on within the boundaries of a single parcel of land described as a "plantation."

The railroad and the mill[18] were located upon a plot of ground and appurtenances all of which were in exclusive possession of Waialua. Practically all the area was also in its "ownership,"[19] although some acreage was leased and one field was connected with the main body by a right of way for moving its agricultural equipment, supplies and sugar cane. By far the greater percentage of the ground in the area was devoted to raising and harvesting of sugar cane in a year round process as an inte-

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[17] The trial court apparently confines the meaning of the word "farm" to the fields upon which cane is actually grown, for it is pointedly said in the opinion, "Obviously cane is not grown on the right-of-way occupied by the fifty-six miles of permanent main line railroad track." 97 F.Supp. 198, 222. Cane probably does not grow on roads where ox teams hauled cane.

[18] The trial court's opinion states that the mill was on the plantation. 97 F.Supp. 198, 204.

[19] Discussion of the peculiar land system of Hawaii is not necessary.

grated operation. This situation dictates that the locus in quo be found to be a "farm." [20]

If then the particular activity of an employee was neither "cultivation and tillage of the soil" or "the production, growing and harvesting" of this crop, he was engaged in a practice performed "by a farmer or on a farm" under the conditions set up in the statute.[21]

Misled by the apparent wholehearted agreement as to the constitutional and jurisdictional conclusion regarding preparation of goods for commerce, the trial court inferred that a worker engaged in any operation or practice

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[20] National Labor Relations Board vs. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 187: "The argument that Respondent has 1,000 acres planted in tomatoes and grows packs and markets many carloads in a season and, because of the very nature and size of its operation, should be held to be engaged in an industrial enterprise as distinguished from the pastoral pursuits of a farmer, will not do. The exemption was not restricted to the forty-acres-and-a-mule farmer. It is not measured by the magnitude of his planting nor in the prolificacy of his harvest. In Larson v. Ives Dairy Co., 5 Cir., 154 F.2d 701, 702, we said: 'Here, however, there is but a single enterprise, and that a dairy farm. * * * The size of the farm, of course, does not matter—it is still a dairy farm.' Here, also, the growing, harvesting, packing and selling are all a part of a single enterprise."

[21] "Congress, as well as this Court, has recognized that the packing and preparing of agricultural products for the market is a necessary incident to any agricultural operation, for no farmer, dependent upon that which he produces to sustain his operations, could long exist if he could not market that which he produces, and so long as the operation of washing, packing, and preparing for market by the employees of a farmer is on that only which he has produced on his farm, it is a necessary incident to farming and is agricultural labor. The wheat farmer must thresh his wheat; *the cane grower must cut his cane and make its juice into syrup;* the cotton grower must gin and bale his cotton; the citrus grower must pick and pack his oranges; and the tomato grower must do likewise. So long as these undertakings are in the preparation and packing by him for market of that which he has grown on his farm, the labor necessary thereto is agricultural labor." National Labor Relations Board vs. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 187 (emphasis added).

which was considered not farming by the strictest classification was covered by the enactment. We emphasize that, if it had been found that reduction of cane to raw sugar or molasses almost immediately after cutting is an imperative necessity, the palpable falsity of such sequela would have been patent. The integrated operation required making of repairs on the crushing mill while shut down for three months for that purpose, the repair and overhaul of the various machines used in cultivating, cutting and hauling, and the furnishing of power for the mill, including the hauling and burning of bagasse [22] in the furnace thereof.

In order to show how obviously it was on the wrong path, it may be observed the trial court concluded employees assisting in repair and maintenance of houses and the operation of services and facilities of villages on the plantation, where some of these agricultural workers lived, including the street sweeper and those who picked up wood for cook fires, were engaged in the preparation of goods for commerce. In this conclusion, which even the Department of Labor does not attempt to defend in its current argument, the trial court betrays emotional aversion for the semi-feudal relationships which still exist in a dependency where the perquisite system abolished by Waialua under pressure still exists.[23] The fact that some of the retainers have lived in these houses of the overlord for life or for more than forty-five years [24] is not good reason to apply the Fair Labor Standards Act, even if this Court also disapproves of the condition.

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[22] The end residue of the cane after abstraction of the juices.

[23] The District Court describes the perquisite system at 97 F. Supp. 198, 214. By a collective bargaining agreement effective November, 1946, this system was abolished and the value of perquisites previously allowed was converted into cash wages.

[24] See the tabulation prepared by the trial court, 97 F.Supp. 198, 215.

The furnishing of housing and facilities for a purely agricultural community is local in its nature.[25] Perversion of concepts and language is essential to transmute irrigation of a growing crop, harvesting by performing processes immediately necessary for crop preservation, or furnishing essential housing to farm workers, into the production of goods for commerce. Mere rationalization will not metamorphize the practice of furnishing housing to workers so engaged into manufacturing. Such conveniences are traditionally furnished in the several states in larger operations of farms, ranches, orchards and plantations. In any event, here the furnishing of quarters for such of its workers who desired to live on the plantation on ground owned by Waialua was a convenient adjunct of farming.

We are forbidden by statute, custom and rule from making new findings of fact, even where we believe these are demanded by the record. This prohibition does not vanish where, as here, comprehensive agreements of facts are made in writing and much of the proof is documentary while the testimony does not bear on the contested issues. Writings and agreements of the parties are notoriously meretricious in dealing with jurisdictional or constitutional questions. Where some findings are clearly erroneous, our duty is to reverse.

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[25] In a case where the employer was engaged in manufacturing, it was said, "* * * the plaintiffs were not covered by the Act while engaged exclusively in 'the construction, maintenance and repair of the residences in the mill village owned by defendant and occupied by its employees'; or, to state the matter differently, while the plaintiffs were so employed they were not engaged in the production of goods for commerce as that term has been defined." Morris vs. Beaumont Manufacturing Co., 84 F.Supp. 909, 910-911. Soomer vs. Durham, 93 F.Supp. 526, is an interesting case wherein building and repair of houses by employees of a coal mining company engaged in the production of goods for interstate commerce under the Fair Labor Standards Act is discussed.

This brings us to a consideration of a constitutional question of some magnitude. Should a statute of general application throughout all the states be given special construction in order to cure economic abuses indigenous to Hawaii? Congress has almost autocratic power over a territory. The commercial status and labor problems of Hawaii might well be settled by specific statute.[26] But the

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[26] The thesis that the peculiar problems of a territory should not be permitted to affect construction of an act designed to protect farmers in the states is well illustrated by the progress of affairs in Puerto Rico, where the situation is even more bizarre than that in Hawaii.

Congress has approached the problem of labor in possessions pragmatically by means of extended investigations and reports. As a result of a realistic awareness of the ideochromatic characteristics of each dependency, the Sugar Act of 1937, Act, September 1, 1937, c. 898, 59 Stat. 903 ff., was enacted, which differentiated explicitly between sugar produced on the mainland and that produced in the dependencies, territories and protectorates, and that produced in the latter between the separate areas. The Court of Appeals for the First Circuit necessarily reconciled the provisions of the Fair Labor Standards Act with the clauses of the Sugar Act applicable to Puerto Rico, Vives vs. Serralles, 145 F.2d 552. Legislatively, the requirement that there be special enactments relating to Puerto Rico has been recognized by the passage of the Act of August 8, 1947, c.519, Title II, § 202, 61 Stat. 924, as amended September 1, 1951, c.379, § 1, 65 Stat. 318. The enactment by Congress of legislation amendatory of the Fair Labor Standards Act, relating particularly to Puerto Rico and the Virgin Islands, Act of October 26, 1949, c.736, § 8, 63 Stat. 915, indicates conformity to the strict letter of the former statute might unhinge the economy of these islands.

When the Act was new, the Wage and Hour Division interpreted the harvesting of the raw sugar from cane as "preparation for market" if done by a farmer. Subsequently, because of a series of decisions relating exclusively to Puerto Rico, the Administrator said the Wage and Hour Division had made a mistake in this interpretation, and that harvesting resulting in molasses and raw sugar was not excluded by the Act. This opinion was advanced with no consideration of the special conditions and legislation relating to the territory and with the intent that the construction be applied to the statute within the several states to which the special provisions of the enactments did not apply.

As noted previously (178 F.2d 603, 611), the Puerto Rican cases are generally distinguishable in that they are not related to activi-

same regulation of agriculture in the states on the mainland would be unconstitutional. In each of the two opinions of this case,[27] the trial court reviewed the whole economic structure of the Territory of Hawaii, the factor system of marketing native products, the vestiges of feudal incidents, the peculiar land system and the dependency of the islands upon the mainland. To crown all, the theory of appellees is that Congress, in passing the Fair Labor Standards Act, did not have in contemplation such an agricultural giant[28] as this farming corporation in a sea island of the Pacific, and therefore the Court refused to exclude its workers employed in agriculture. This premise is obviously based upon the idea that the language of the Act clearly excludes employees of such a corporation, but, if Congress had contemplated Waialua, the law would have placed such workers under the wages and hours provisions. But, disregarding all logical conclusions from its premise, the trial court applied the drastic overtime pro-

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ties performed by a farmer or on a farm, but are either cooperative enterprises or are done by some outside agency. On the other hand, certain judicial interpretations, if viewed as interpretations of the general act binding on farmers on the mainland, are excrescences as foreign as gargoyles on a classic temple. McComb vs. Puerto Rico Tobacco Marketing Co-op Assn., 80 F.Supp. 953, affirmed, 1 Cir., 181 F.2d 697; McComb vs. Del Valle, 80 F.Supp. 945; McComb vs. Casa Baldrich, Inc., 80 F.Supp. 869; McComb vs. Super-A Fertilizer Works, 1 Cir., 165 F.2d 824.

[27] Found at 77 F.Supp. 480 and 97 F.Supp. 198.

[28] The Supreme Court expressly recognizes that largeness is not the test. In Addison vs. Holly Hill Fruit Products, Inc., 322 U.S. 607, 614-615, the Court adopted with approval and applied in the solution of a like problem an expression uttered in a debate in the Senate. "Senator Schwellenbach frankly stated that the largest apple packing plant in the world would be exempt if the 'work done in that plant is as described in the amendment'." The Court summarized its position as follows: "Where Congress wanted to make the exemption depend on size, as it did in two or three instances not here relevant, it did so by appropriate language. Congress referred to quantity when it desired to legislate on the basis of quantity."

visions in all their rigor to the peculiar corporation which Congress had not considered.

If we were drafting a specific law to deal with labor conditions of Hawaii, emotional sympathy for some of the attitudes of the trial court might be given effect. But we are construing a general statute binding in all the states as well as this territory.

Everyone who remembers the history of this legislation knows that the mainland farmers were alert when these bills were in Congress. The Congressional Record indicates how changes in the language were required by them and that the legislators debated and explained the effect of each provision.[29] The statute which was written seems plainly to protect all possible phases of agricultural pursuits from regulation.[30] But the drive of a motivated bureau, which apparently considers the interests of labor utterly inimical to any protection of the farmer, has distorted the language used by some of the courts.

Do some opinions mean that the plain expressions of Congress in the statute excluding those employed in agricultural pursuits are to be overridden by some higher policy. The expressions of Congress were dictated not only by the pressure of the farmers, but by the realization that the federal constitution left local concerns such as agriculture wholly in the governance of the several states.

One of these perversions which might be allowable in a statute applicable to a territory alone is the attempt to

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[29] See 81 Congressional Record 7648 et seq., 83 Congressional Record 7393, 9162-9163, 9253 et seq., H.R. No. 1452, 75th Congress, 1st Session, pp. 4-5, 11; H.R. No. 2182, 75th Congress, 3rd Session, p. 2.

[30] The agricultural exclusion "is drawn in far reaching language which shows the intent of Congress to make the term 'agriculture' cover much more than what might be called ordinary farming activity and that is what now controls." Damutz vs. William Pinchbeck, Inc., 2 Cir., 158 F.2d 882, 883.

make the farmer prove affirmatively that the particular activity falls within the statutory exclusion. The use of the word "exemption" in a heading of the enactment has been seized upon by the bureau and followed by the language of some of the courts.[31]

But agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in a constitutional sense.[32] Most agricultural products eventually get into interstate transportation. But growing and harvesting of such products is not preparation of goods for commerce. The statute sets this out in immutable terms by expressly stating that preparation of goods for market by a farmer or on a farm is excluded.

So we must go further and direct the proceeding be dismissed for abuse of discretion in entertaining a petition for declaratory judgment here and attempting to settle

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[31] This Court, in the former opinion, 178 F.2d 603, 609, indicated that the workers in agriculture were completely excluded from the provisions of this Act. The language of the statute makes it abundantly clear that, since agriculture is a local enterprise and cannot without distortion be called commerce or preparation of goods for commerce, the manifest intention was to exclude workers on farms and those employed in agriculture from the sweep of the Act. The use of the words "exempt" and "exemptions" in the regulations and by the courts is justified by the text. But the words of the statute, "shall not apply with respect to", indicate a policy of exclusion of such employee no matter what the business of the master. With regard to agriculture, this policy of exclusion was as powerful as the policy which dictated the general provisions controlling employees in industrial pursuits. There is no ground to invoke the theory of technical, narrow construction of the Act to cover this basic food supplying industry. Walling vs. California Conserving Co., 74 F.Supp. 182, affirmed, 9 Cir., 167 F.2d 905, cert. den., 335 U.S. 845.

[32] Federal regulation of agriculture invades the reserved rights of the states. United States vs. Butler, 297 U.S. 1, 68 But cf., Wickard vs. Filburn, 317 U.S. 111.

a question of jurisdictional and constitutional construction therein.[33]

It is true the statute was not passed with the peculiar economic situation of Hawaii in mind. Probably no specific contemplation of an organization such as Waialua was in the foreground. But no one can deny that the positive clauses of the Act were to assure the farmer in the several states of the continuance of his untrammeled way of life. It was the intention that no bureau should dictate the hours of his work[34]—traditionally from sun to sun—in the vitally essential task of feeding this nation and foreign peoples to whom aid has been extended in the form of foodstuffs. It has been a platitude of American politics that the farmer is required to pay higher prices for those things which he buys than he can obtain for the products which he raises and sells. It was in the effort to prevent the specialization of labor employed in agriculture, where every man must be able to do all of the multitudinous tasks, that these sections were adopted. It was to the end that the farmer could use in the operations on the farms unskilled and migrant labor, so that his economic burden might in one respect be lessened. These provisions of the statute were included to prevent placing innumerable restrictions and crushing burdens by bureaucratic supervision upon the American farms of the mainland.

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[33] "This Court is without power to give advisory opinions. It will not decide constitutional issues which are hypothetical, or in advance of the necessity for deciding them, * * *." Asburn Hospital vs. Cass County, 326 U.S. 207, 213.

[34] Speaking of the Fair Labor Standards Act and other acts, the Court of Appeals for the Fifth Circuit states: "* * * that exemption seems to have been a part of a general legislative pattern of those times which clearly indicates that the purpose of Congress was to relieve distressed farmers from burdens which it well knew they were not equipped to carry." National Labor Relations Board vs. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 187.

There has been an attempt to use the Farmers Reservoir case as a precedent here.[35] The gist of the decision there was that release of water from a headgate by the field men of the reservoir company was not farming, (as actual application of the water to a growing crop would have been); it was not an act done by a farmer in connection with farming and it was not done on a farm. The decision on these specific grounds must be followed. Besides, there is no reason to question its logical validity on the basis above set out. It is true that the majority unfortunately accepted the acquiescence of the parties as establishing the constitutional and jurisdictional factor that the employees of a local irrigation company were engaged in a "process or occupation necessary for the production of goods for commerce." Thereby the longstanding principle of decision that a constitutional and jurisdictional issue will not be debated or considered unless actively raised by the parties was abandoned. Nor can we accept as an explanation that rationalization leads to quaint results.[36]

However that may be, in this case in a declaratory judgment proceeding in a territory, all parties and the Department of Labor acquiesce in the proposition that farming itself is production of goods for commerce. We repudiate consent of the parties as a basis for decision. Upon this fallacious theory, the trial court arrived at its findings and conclusions here accused. We hold that a farming operation such as growing the crop or harvesting is not commerce. By no dialectics can it be shown that irrigation, cultivation, plowing of the ground, pruning of the trees or any of the processes before harvest,

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[35] **Farmer's Reservoir and Irrigation Co. vs. McComb, 337 U.S. 755.**

[36] **"Both in the employments which the Fair Labor Standards Act covers and in the exemptions which it makes, Congress has cast upon the courts the duty of making distinctions that often are bound to be so nice as to appear arbitrary in relation to each other." Id. at 770 (concurring opinion).**

whether performed by a farmer or on a farm, are other than purely local concerns relating to the production of a crop. Common sense forbids it. Jurisdiction to regulate farming on the ground that the products thereof may eventually go into commerce cannot be conferred by consent of the parties even in a particular case. By definition, any process essential to the growing, production or harvesting of crops is neither interstate or foreign commerce nor preparation of goods therefor, nor yet again a process or occupation necessary for the production of goods for commerce. Farming in the several states cannot be regulated as commerce even if it does constitute preparation of farm products for market. To hold otherwise would violate the express exclusionary language of the agricultural clauses of the statute and the public policy of cheap production of foodstuffs above noted.

The public welfare requires that this statute be not given a local interpretation to fit the needs of any territory, and that such special interpretations be not applied to agriculture throughout the several states.[37] The language of the exclusion interprets a constitutional guarantee. It is a charter for the mainland farmer. So far as possible, in raising food for our widespread peoples, the farmer should be exempt from higher cost of labor. He should be able to plow, cultivate, irrigate, seed and harvest his crop without paying tribute. These processes, essential to all, should not be made to cost more.[38] The

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[37] This warning was expressed in our former opinion, 178 F.2d 603, 613: "The danger is that, by agreeing to this course of conduct, a precedent might be established for the settlement of problems on the mainland which does not have the peculiar problems of Hawaii."

[38] "It does not take a long memory to recall that in the midst of the depression of 1935, and for a time before and since, the farmer was the object of the deepest solicitude by Congress. It furnished abundant evidence that it believed that no class of citizens of the country was in greater need of Congressional aid than the farmer." National Labor Relations Board vs. John W. Campbell, Inc., 5 Cir., 159 F.2d 184, 186.

farmer in California should be able to run the heads of wheat through a thresher or combined harvester and shell out the grain, clean it, test it for protein content and store it. He should be able to transport it on the farm to the thresher or to storage or market, whether by his own railroad or by trucks or by airplane. The stock raiser in Idaho should be able to use all forms of transportation carrying calves or other stock to spring pasture or feeding grounds. The stock rancher should be able to use his vaqueros to repair barns, fences, corrals and even bunkhouses, where his employees sleep, without becoming a master carpenter. The raiser of peas should be able to make repairs and changes in his tractors, viners and mowers by his own employees without becoming a master mechanic. He should be able to transport the fresh peas many leagues from his land to the canner for essential immediate processing by his trucks driven by farm hands without becoming a trucker.

The sheepman can have a worker employed by him run the system of gas or home-generated electricity which lights up innumerable farm buildings and feed the chickens he sells without becoming subject to the higher costs under the industrial provisions of this law. The orchardist of Washington should be able on his own land to pare and core the apples, transport the meat thereof to market, press out cider from the corings and peelings in a steam driven mill on his own land, and apply the residual pomace as dressing to his land without becoming a manufacturer.[39] The operations described in processing raw sugar from cane in Louisiana are in the same class.[40]

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[39] The suggestion that this argument permits the farmer to carry on extraneous manufacturing of such articles as automobiles on a farm is vacuous.

[40] As in the case of Miller Hatcheries, Inc. vs. Boyer, 8 Cir., 131 F.2d 283, 286, "We are dealing with a situation where there has been 'a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in mo-

The authorities adverse to the maintenance of this declaratory proceeding are set out in the previous opinion.[41]

The territorial institutions of Hawaii had provided the protection for these workers almost identical with that which is the subject of this proceeding.[42] It is agreed by the parties that this Act requires Waialua to pay and it does pay as much or more than the minima of wages required per hour by the federal law. Perhaps, if local conditions compel, the territorial legislature will require the same work week in farming as is exacted by the Fair Labor Standards Act, but without federal bureaucratic control, which would necessarily be renounced if statehood were attained.[43]

Each of these employees had an adequate remedy by action at law if any thought he was aggrieved.[44] The matter could have been tried on the facts relating to his employment without the misleading background.

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tion; of making the parts work efficiently and smoothly while they are yet untried and new'."

The Wage and Hour Division, on August 21, 1939, interpreting the Act when it was new, said:

"Section 13(a)(6) renders the wage and hour provisions of the Act *inapplicable* to employees employed in 'agriculture' * * *

"(b) The term 'preparation for market' must be treated differently with respect to various commodities. The following activities among others, *when performed by a farmer*, seem to be included within the term: * * *

"4. *Sugar—Manufacturing raw sugar, cane or maple syrup and molasses.*" Interpretative Bulletin No. 14. (Emphasis added.)

[41] 178 F.2d 603, 613-614, notes 16-28.

[42] During each workweek involved herein, Waialua's employees received wages in excess of the Act's requirements. They received overtime pay for hours worked in excess of 48 hours a week. Thus defendant employees are seeking a maximum of 8 hours overtime pay for any of these workweeks.

[43] Perhaps for this reason Congress has never passed special provisions of this law applicable only to Hawaii, as it did for the Virgin Islands and Puerto Rico. See Note 26, supra.

[44] 29 U.S.C.A. § 216(b).

The cause is reversed for proceedings in accordance with this opinion.[45]

(Endorsed:) Opinion. Filed May 5, 1954.

Paul P. O'Brien, Clerk.

Judgment of United States Court of Appeals for the Ninth Circuit, dated May 5, 1954.

Appeal from the United States District Court for the District of Hawaii.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Hawaii, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is reversed for proceedings in accordance with the opinion of this court, without costs to any party in this court.

(Endorsed) Judgment.

Filed and entered May 5, 1954.

Paul P. O'Brien, Clerk.

Opinion of United States Court of Appeals for the Ninth Circuit, dated June 24, 1954, upon Petition for Rehearing.

BEFORE: HEALY, BONE and FEE, Circuit Judges

JAMES ALGER FEE, Circuit Judge:

The opinion of the Court needs no clarification. The cause was reversed, the final orders set aside and the cause remanded with directions to dismiss Waialua's declara-

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[45] Arguments advanced by appellees and amicus curiae which are rendered immaterial because of the Court's decision are: (a) that the processing exemption, 29 U.S.C.A. § 207(c), applies only to the "place" in which processing is carried on and only during such time as processing is actually taking place; (b) that any employee who engages in a non-exempt activity for any portion of a workweek is covered by the Act during such workweek.

tory petition. The Court construes what is called the cross-complaint as a petition also for declaratory relief. This is left undismissed by this Court. If the appellees believe this to be a counterclaim at law, they may take further proceedings as suggested in the latest opinion of this Court. The parties and the Trial Court, however, should be mindful of the fact that this Court has held that the entire cause was tainted by apparent collusion between the parties in the attempt to obtain an advisory opinion upon constitutional questions. The considerations of expense in futile proceedings are, of course, the concern of the parties.

Rehearing denied.

(Endorsed:) Opinion on Petition for Rehearing. Filed Jun. 24, 1954. Paul P. O'Brien, Clerk.

Order of United States Court of Appeals for the Ninth Circuit, dated June 24, 1954, denying Petition for Rehearing.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Thursday, June 24, 1954

Before: HEALY, BONE and FEE, Circuit Judges.

ORDER DIRECTING FILING OF OPINION ON PETITION FOR REHEARING AND DENYING PETITION FOR REHEARING

ORDERED that the typewritten opinion this day rendered by this Court on petition for rehearing in above cause be forthwith filed by the Clerk.

Pursuant thereto and on consideration of the petition of appellant, filed June 2, 1954 and within time allowed therefor by rule of court, for a rehearing of above cause, IT IS ORDERED that said petition for rehearing be, and hereby is, denied.

Opinion of United States District Court for the District of Hawaii, dated May 3, 1951

In The United States District Court for the Territory of Hawaii

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Civil No. 787

WAIALUA AGRICULTURAL COMPANY, LTD.,
Plaintiff and Cross-Defendants,

vs.

CIRACO MANEJA, et al.,
Defendants and Cross-Claimants.

Opinion and Decision of Court (May 3, 1951) Containing Findings of Fact and Conclusions of Law

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METZGER, J.

Part I.

Statement and Findings

I

Nature of Action, Controversy Involved, and Jurisdiction.

This action arises under the Fair Labor Standards Act of 1938 (the Act of June 25, 1938, 52 Stat. 1060, 29 USC Sections 201, *et seq.*). Plaintiff sought a declara-

tory judgment, and the defendants filed a counter-claim under Section 16(b) of the Act to recover unpaid overtime compensation for work performed by them as employees of plaintiff, and to recover liquidated damages, costs and attorneys' fees.

Following an earlier trial herein, a decision and judgment of this court (reported at 77 F.Supp. 480), and an appeal to the United States Court of Appeals for the Ninth Circuit, this action was remanded to this court for further proceedings by a judgment of the Court of Appeals rendered November 10, 1949 (reported at 178 F.2d 603).

Following the remand, all pleadings heretofore filed in this action were amended by the parties, so as to drop certain parties defendant from the litigation, to eliminate the representative character of the case, and to limit the action to the period from November 20, 1946, to and including September 14, 1947.

Under the amended pleadings, the following issues arise with respect to that period of time:

A. Were the defendants or any of them exempt from the provisions of the Act by virtue of Sections 13(a)(6), 7(c), or 13(a)(2), during all or any workweeks falling within the aforementioned period?

B. Were certain of the defendants, while performing work of repairing and maintaining plaintiff's dwelling houses, and while furnishing related facilities and services to plaintiff's employees and others occupying such dwelling houses, engaged in commerce or in the production of goods for commerce, within the meaning of Section 3(j) of the Act?

C. What, if any, amounts are any of the defendants entitled to recover from plaintiff pursuant to Sections 7(a) and 16(b) of the Act?

These issues are raised by (a) the amended complaint of plaintiff and defendants' answer thereto; and (b) defendants' counter-claim, cross-claim and cross-complaint under Section 16(b) of the Act, and plaintiff's reply and answer thereto. In addition, defendants seek awards of liquidated damages, and recovery of costs and attorneys fees, pursuant to Section 16(b). By its reply and answer, plaintiff seeks to defeat the request for liquidated damages, as well as overtime wages due for the period prior to May 14, 1947, by appealing to the good faith defenses contained in Sections 9, 10 and 11 of the Portal-to-Portal Act of 1947 (Act of May 14, 1947, Public Law 49, c. 52, 80th Cong., 1st Sess., 61 Stat. 84, 29 USC Sections 251-263).

All issues have been presented and tried in a single trial. The evidence consists of a lengthy stipulation to certain facts, the testimony of plaintiff's office manager, the testimony of 22 of the defendant employees of plaintiff, and certain exhibits received in evidence, to which reference will be made later.

This case does not involve waiting time, clean-up time, travel time, or any of the types of activity whose consideration occasioned in part the passage of the Portal-to-Portal Act of 1947. Defendants have alleged, it is not disputed by plaintiff, and it is found by the court, that the work performed by defendants for plaintiff, for which recovery is sought in the counter-claim, was the principal work performed by them, was compensable both under an express contract and under custom and practice within the establishments and places where the defendants performed such work, and was performed during portions of the days with respect to which the same was so made compensable; that all such work was in fact paid for by plaintiff, but the dispute between the parties is whether the amounts so paid were sufficient to discharge plaintiff's obligations under the Act for overtime compensation.

This court has jurisdiction of this action and of the parties hereto pursuant to (a) Section 24 of the Judicial Code as amended, 28 USC Section 1337; (b) Section 274(d) of the Judicial Code, 28 USC Section 2201; and (c) Section 16(b) of the Fair Labor Standards Act of 1938.

Parties and Period of Time Involved.

Plaintiff is a corporation organized under the laws of the Territory of Hawaii on December 14, 1948. This action was instituted on April 9, 1947, by a predecessor corporation to the plaintiff, bearing the same name. On December 14, 1948, plaintiff acquired certain of the assets and business, and assumed certain of the liabilities, of the predecessor corporation, including all rights, interests and liabilities in, or which might arise out of, this action. By stipulation, plaintiff has been substituted as the party plaintiff in this action for the predecessor corporation. All subsequent references to "plaintiff" refer either to the predecessor corporation or to the new corporation substituted herein, depending on whether the matters to which they relate occurred prior or subsequent to December 14, 1948.

Defendants are 42 individuals who were employed by plaintiff during the period from November 20, 1946, to September 14, 1947, inclusive. Each of them appears in this proceeding on his separate behalf only, and in no way as representative of any other persons or legal entities. Unless otherwise specified, each performed his work on the plantation.

Summary of Plaintiff's Business.

Plaintiff operates a sugar plantation located in the District of Waialua, City and County of Honolulu, Island of Oahu, Territory of Hawaii. In 1945, it was the third largest producer of raw sugar in the Territory.

At the present time the plantation grows and produces sugar cane on 9,663 acres of land owned or leased by it. Substantially all of the land now devoted to sugar cane production has been owned or leased by the plantation and used by it for this purpose since 1910.

As of approximately the commencement of the period covered by this litigation, plaintiff had a total of 959 non-supervisory employees.

Plaintiff's business consists of (a) growing, cultivating, and harvesting sugar cane on the lands owned or leased by it; (b) operating a system of railroad transportation over which harvested cane is hauled to plaintiff's mill; (c) processing such cane into raw sugar and molasses at the mill; (d) shipping such raw sugar to a refinery situated in the continental United States, where such raw sugar is refined and subsequently sold under the circumstances later discussed herein; (e) shipping molasses in bulk to the continental United States; (f) operating a series of shops for the purpose of maintaining, repairing and overhauling plaintiff's buildings, machinery, equipment, vehicles, and rolling stock; (g) maintaining mill villages and housing in which plaintiff's employees and their families dwell.

Plaintiff processes no cane except that grown by itself on its plantation. Neither does it directly engage in any sugar refining operation. However, plaintiff and 30 other companies engaged in the production of raw sugar in the Territory, constitute the total membership of an association called California & Hawaiian Sugar Refining Corporation, Ltd. (C & H), a California corporation. C & H is qualified as a cooperative marketing association under the federal Capper-Volstead Act and under the applicable laws of the State of California. During the period involved in this litigation the members of C & H, including plaintiff, were under contract to deliver, and did

deliver, to C & H, all of the raw sugar produced by them in the Territory, except for inconsequential amounts sold for consumption as raw sugar in the Territory.

In this same period, C & H operated a sugar refinery at Crockett, California. Under the mentioned contract, C & H was entitled to process all raw sugar delivered to it by its members, and to sell the refined sugar resulting therefrom, as well as to sell in the form of raw sugar any quantities delivered by the members of C & H. Actually, C & H processed into refined sugar more than 90% of the raw sugar delivered to it by its members, selling the balance as raw sugar.

The proceeds received by C & H from its sale both of refined sugar and of raw sugar, as well as any by-products produced by it, were distributed in the following manner. After first deducting the operating expenses of C & H, the remainder was paid over to the members of C & H, including plaintiff, partly in the form of dividends at 6% on the shares of capital stock of C & H, all of which were owned by the aforementioned 31 Hawaii companies—"substantially in the same proportion as the tonnage of raw sugar which they ship to C & H" (Def. Ex. 2)—and the balance was paid over to the same companies, in direct proportion to the amounts of raw sugar delivered by them to C & H.

Plaintiff's Plantation Operations.

Sugar cane is highly perishable. To avoid serious losses it is processed into sugar, syrup or molasses within a relatively short time after being harvested—usually, as the record shows, the practice of processing is between 4 and 16 hours. It "cannot be stored more than 2 or 3 days without spoiling" (Def. Ex. 3B, p. 36).* It does

* For this reason and because of the great weight and bulkiness of cane as compared with raw sugar, it must be processed within a few miles of where it is grown.

not move into interstate commerce in its natural state. Except for small amounts which are used as seed cane, it is grown for the purpose of producing sugar, syrup and molasses. It is these products, which result from the processing of cane, that become articles of interstate commerce.

Substantially all of the cane-growing land of plantation, its buildings and yard area, and other lands owned or leased by it, but unsuited for cane growing, including a wooded area from which firewood is cut for use for fuel by plantation employees living in the plantation villages, forms a contiguous and compact area. All lands devoted to the growing of cane are managed and operated by plaintiff as an integrated farming unit and single enterprise with identical cropping, cultivation and harvesting practices, and with the same labor and equipment.

The growing and harvesting of cane, its processing in the mill, and the shipping of raw sugar to the refiner, take place continuously for a period of approximately 7-9 months. Annually, the harvesting and processing of cane are wholly suspended for the remaining 3-5 months, for the purpose of completely reconditioning the mill and equipment, and installing machinery and improvements.

Plaintiff's buildings, including the mill where cane is processed into raw sugar, and a number of buildings which house repair shops for the maintenance of field, transportation and mill equipment, warehouses for plantation supplies, and other buildings having functional relation to the entire plantation operations, are centrally located in the lowlands of the plantation in a compact area.

Plaintiff's cane field operations are highly mechanized. Since 1910 there has been a gradual reduction in the number of man days required to produce a ton of raw

sugar on plaintiff's plantation. This reduction was brought about through mechanization and the application of scientific methods. To a large extent hand labor and the use of horse-drawn equipment and vehicles have been eliminated, and motorized equipment substituted in their stead.

The transportation system of plaintiff is also highly mechanized, and this is likewise true of the processing operations in the mill.

There is a high degree of coordination between field operations, transportation, mill processing, shipping, and all other aspects of plaintiff's activities.

> "Operational problems on a sugar plantation are comparable to those of a Detroit factory rather than to those of a large Iowa farm. The Primary objective of the management is to maintain 'belt-line production' of sugar by so scheduling the various field throughout the plantation for harvesting and transport to the mill that full-scale raw-sugar production will be continuous, 24 hours a day. To do this it is necessary to maintain a fleet of large trucks, mechanical harvesting equipment, a system of narrow-gage railways (or other means of transporting cane to the mill), a laboratory for scientific observation to determine the water and fertilizer needs with an organized force of workers to implement these findings, and large pumping stations and gravity systems for controlling irrigation." (Def. Ex. 3B, p. 36.)

During the year 1945, plaintiff's direct operating expenses amounted to one and three-quarter million dollars. Of this sum, manufacturing costs approximated five hundred thousand dollars, and an additional sum of approximately two hundred thousand dollars was expended on transportation, in major part for main line hauling of cane into the mill. The record does not disclose the amount expended for operation of the repair and service

shops, or for maintenance of employee housing and village facilities.

It appears that plaintiff's railroad system was valued at more than three-quarters of a million dollars (Def. Ex. 2).

Activities Occurring From the Time Cane Fields Are Prepared for Planting Up to the Time of Harvesting.

In the preparation and plowing of its cane fields, a so-called "stone boat" sled is used to clear the fields of stones, rocks, and similar obstructions. Concrete irrigation flumes and pipes are moved to their proper location. Sugar cane seed is then planted. The fields are then "ratooned", this being an operation performed after a cane field is harvested to prepare it for the growing of another crop. In the cultivation, herbicides and insecticides are applied, by means of spraying equipment; in the fields, along irrigation ditches and flume areas, and along cane field roads. Weeds are removed, fertilizer is applied to the fields, and water is supplied by a network of irrigation ditches, canals, siphons, concrete pipes, flumes, water sto ige reservoirs and pumps, all of which plaintiff owns, operates and maintains. Ultimately the cane is harvested, loaded into cane cars on portable tracks in the fields, and then moved to the main line railroad.

Throughout the plantation, plaintiff maintains a network of field roads for the transportation of labor, field supplies and equipment.

Intensive irrigation throughout the year is required for the acreage devoted to cane production. Irrigation frequency is guided by soil moisture samples collected weekly from each field. Approximately 97.98% of the water received by plaintiff is utilized for irrigation of its cane fields. The degree to which water is used by plain-

tiff for irrigation purposes is shown by a tabulation received in evidence. In the year 1940, for example, plaintiff applied 30,548 million gallons; this was a daily average of 84 million gallons. By way of comparison, the city of San Francisco used 65 million gallons daily in the same year (Def. Ex. 3B, p. 43).

Plaintiff also uses substantial quantities of water to supply its mill, to operate locomotives used on plaintiff's railroad, for the domestic water needs of plantation villages and plaintiff's employees living therein, for sale to small farmers whose produce is consumed locally, and for plaintiff's system of fire protection. The amount so consumed averaged two million gallons daily.

Harvesting Operations.

To insure a balanced flow of cane to the mill, harvesting operations are coordinated with the needs and capacity of the mill, and the potential of its transportation system.

Fields ready for harvesting are first burned over, to increase efficiency in removing the cane and to reduce trash carried to the mill. In preparation for burning, fire brakes are cut through the cane by a tractor bulldozer rake. This tears cane stalks from the stools and pushes cane off to the side.

After the cane is burned, the bulldozer rake opens up lines for the laying of portable track. A portable track plow or leveler follows through these lines to make proper beds for the track. Portable track rail cars, loaded with sections of track, are drawn into the cane fields by tractors. Lifting machines hoist the track sections from the loaded cars and lay them on the track beds. Empty cane cars are then hauled from the main line of plaintiff's railroad onto a siding thereof into the field for loading purposes, and are placed into position

for loading. Cane is loaded on the cars by machines, which are cranes equipped with a boom and a finger-like grab; these pull or grab the cane loose from its growing position and load it directly into the cars. Plaintiff owns 9 such caneloading machines. Full cars are hauled out of the field to the main line for transportation to the mill. A carload of cane averages slightly less than 5 tons per car, gross cane.

Cane pieces along the portable track are later picked up by a ground crew and thrown into cars drawn by tractors. Full carts are dumped near the cane loading machines for subsequent lifting into cane cars. Cane dropped in the fields is bulldozed into piles, and these are later lifted by machine into the cars. This operation is referred to as "brooming cane". Where the main line railroad passes adjacent to the cane field, harvested cane is loaded directly into cars spotted on the main line tracks.

Main Line Transportation.

From the time of its organization plaintiff has owned and operated a narrow-gage railroad system. This system is constructed, located and operated exclusively on the plantation. It hauls no cane or freight for anyone other than the plantation. It is used predominantly to haul sugar cane from points where cane cars have been concentrated to the mill. It is also used to haul portable rails and other supplies and equipment from the plantation's warehouses and shop yards to and from the fields, but most of this type of hauling is handled by the plantation trucks. The plantation has a spur track approximately three thousand feet in length running from its mill and warehouses, and connecting with the railroad line of the Oahu Railway & Land Company. This spur track was used by the plantation to deliver box and tank cars loaded with sugar and molasses to the O. R. & L.

Company, and to receive incoming supplies delivered to the plantation by the O. R. & L. Company. The O. R. & L. Company discontinued its operations at the end of 1947. Since that time the outgoing and incoming freight of the plaintiff has been handled by an independently owned and operated trucking company.

The plaintiff's railroad network consists of 56 miles of permanent main line track, hereinafter frequently referred to as "plaintiff's main line railroad", and slightly more than 9 miles of portable track.*

The plantation railroad equipment consists of six 25-ton steam locomotives, one 17-ton steam locomotive, one 12-ton steam locomotive, one 12-ton gasoline locomotive, and one 14-ton diesel locomotive, 200 steel cane cars measuring approximately 11 feet by 6 feet by 5 feet, and 512 wooden cane cars measuring approximately 10 feet by 6 feet by 5 feet.

For the functioning of the railroad system, plaintiff maintains a roundhouse, employs section men to maintain the main line trackage, employs 10 crossing watchmen to protect the public at government road crossings, employs workers to spray the railroad rights-of-way with a herbicide, employs workers who together with field men pick up cane spilled along the railroad rights-of-way, and employs personnel to operate the trains. Six to nine train crews, with an average of seven, are required daily to handle cane and incoming and outgoing freight. A train crew consists of four men, including a locomotive engineer, a fireman, a front brakeman and a rear brake-

* Portable track laid in the field for harvesting operations lacks proper roadbed for the locomotives. The primary reason for the use of the portable track for harvesting is that permanent track cannot be laid in the field because of interference which would otherwise result in planting and cultivating operations. During the short periods when such track in the fields is in use it is an integral part of the railroad system over which cane cars move directly from the fields to the mill.

man. A cane train averages at least 60 cars, though this number sometimes goes up to 80 or even 90 cars.

Working in the roundhouse are a hostler and an engine wiper, who wash the locomotives and steam boilers, oil and grease the locomotives, fire and steam the locomotives preparatory to the day's operations, and assist in minor repairs to locomotives.

During the off-season, when cane is neither being harvested nor processed, the section men, supplemented by approximately 12 brakemen and 5 firemen, are used in repair and maintenance of main line trackage. Watchmen are used for cleaning and weeding the rights-of-way. Usually one locomotive engineer, two firemen, and three brakemen are assigned to assist the electricians on mill work primarily. One fireman and two brakemen are generally assigned to the welding shop to assist in off-season factory repairs and installation of new equipment. Two more brakemen are sometimes assigned to repair work in the boiling house. One yard engine crew, consisting of an engineer and several brakemen for the diesel locomotive, is maintained during the off-season. Locomotive engineers not otherwise used assist in locomotive repairs.

Mill Operations.

At its mill, plaintiff processes cane into raw sugar and molasses. Raw sugar is there bagged for shipment to the C & H refinery at Crockett, California. Molasses is either loaded for shipment to the continental United States, or stored temporarily in molasses tanks. Bagged sugar and molasses were loaded into railroad box and tank cars of the Oahu Railroad & Land Company, a carrier, which then proceeded with the transportation of these commodities to points of shipment for the mainland.

The term "mill" means the building and equipment of plaintiff used in the actual processing of sugar cane into raw sugar. This includes a cane-cleaning plant and

scales, mill carrier, crushing plant, boiling house, fire-room, power plant, sugar warehouse, molasses tank, and all equipment located therein.

Mill operations commence when loaded cane cars are delivered by locomotive on the plaintiff's main railroad, to the mill yard and moved up to the mill. Here the cane is weighed, unloaded, washed, and as much trash is removed as is mechanically possible. These operations take place in the cane-cleaning plant.

After being cleaned, the cane is moved by mill carrier to the crushing plant, is there crushed, and the juices extracted. Sugar juices are then clarified and crystallized in the boiling house. The chief product, which is raw sugar, is then bagged and shipped, or temporarily stored and later shipped.* Molasses is pumped into a storage tank at the mill, and later shipped.

The cane fiber which remains after the extraction of the juice from the cane stalk is known as bagasse. It serves as an economical source of fuel for the production of power. Bagasse produced at this plantation has no marketable value, but is burned in the fire-room, located in the mill, and produces steam. This in turn is used to drive the mill engines and cane processing equipment, to heat and evaporate sugar juice and crystallize the raw sugar, and to generate electric power at the mill's power plant. Steam used for the latter purpose, after passing through generating machinery, is conveyed through lines for further use in processing operations.

The power plant generates electric power. This, however, supplies only about two thirds of the power needed by plaintiff, so it purchases one third of the power used

* The plaintiff's temporary storage of raw sugar is never motivated by economic considerations, but is due only to the limited number of cars and limited storage space at the port wharves and occasional interruptions in ship schedules.

by it from the Hawaiian Electric Company, Ltd., an independently owned and operated public utility.

There are times when plaintiff's power system generates more power than it has need of. Because of an existing tie-in between its power system and that of Hawaiian Electric Company, on rare occasions plaintiff feeds back power into the system of Hawaiian Electric. Credit for such power is given to plaintiff in the same manner as though a sale had occurred.*

Power generated by plaintiff, as well as that purchased by it, is distributed by transmission lines to all the various operations on the plantation, and also to several non-plantation users living in the plantation community. The total amount of power used by non-plantation users is about one-half of one per cent of all the power distributed by plaintiff. None of it is used for or in connection with the production of goods for commerce, or to operate any instrumentalities of interstate commerce, or transmitted into interstate commerce.

In the off-season, when the steam and electric power equipment in the mill are overhauled, plaintiff generates no electric power, purchasing all the power it needs from the Hawaiian Electric Company.

Weekend Shutdown In the Mill

Production in the mill operations is keyed basically to a 6 day week with continuous and around-the-clock operations divided into three 8-hour shifts. The mill stops grinding cane at 2 p.m. Saturday and starts up at the same time on Sunday. The cessation of grinding operations on Saturday does not, however, result in the stopping of all mill operations. As shown later, in the descrip-

* Power is not fed back to the Hawaiian Electric lines for the purpose of selling power but only because it is a necessary, convenient and economical method of disposing of the excess power.

tions of work performed by various defendants, the week-end shutdown period does not extend for 24 hours in regard to the boiling house, the fireroom, and the operations of the power plant.

The weekly shutdown for mill operations is necessary to perform cleaning and minor repair work.

Off-Season

Although sugar cane can be and is grown the year round in the Territory of Hawaii, efficiency of operations dictates the closing down annually of sugar mills so that extensive general repairs, reconditioning, and installation of improvements can be had. That part of the year when the mill is shut down for repairs is termed the "off-season". While the off-season usually lasts 3-5 months, in the period covered by this litigation it extended only from December 22, 1946, to and including February 9, 1947.

During the off-season, plaintiff conducts no harvesting, cane transportation, or cane processing operations. Field operations continue.

Most of the off-season repair work in the mill is done by employees who, during the grinding season, operate the mill machinery. However, some of this repair work is done by employees of the machine shop, welding shop, blacksmith shop, carpenter shop, and electric shop.

Just as many man-days of work are performed during each 24 hour period in the mill during the off-season as during the grinding season.

Repair and Service Shops

Both field and mill operations necessitate the equipping and maintaining of complete service shops for prompt minor repairs and emergency work and major overhaul.

Plaintiff operates and maintains a number of repair and service shops which are physically distinct from the mill, housed in separate buildings, and located in an area extending up to 300 feet from the mill building. These shops employ upwards of 100 men, plus necessary foremen and supervisors. These shops are: machine shop, welding shop, blacksmith shop, tinsmith shop, caneloading machine repair shop, tractor repair shop, garage, electric shop, carpenter shop, paint shop, plumbing shop, and roundhouse.

1. *Machine Shop*

The machine shop is staffed by 8 employees working under supervision of a machine shop foreman. Practically all of plaintiff's machining work, except heavy work required by the mill, railroad and shops, is done in the machine shop. The grinding of crankshafts for cars, trucks, tractors, and cranes, the machining of emergency parts for such equipment, and machine work on irrigation pumps are performed in this shop. Major locomotive repairs are made by machine shop personnel working with a heavy crane in the welding shop.

Approximately 46% of all machine shop work is for the mill, and 50% for other service departments, including repairs to steam engine driven irrigation pumps. During the off-season, mill work done by the machine shop accounts for from 85% to 90% of the total man hours' work performed.

Work in the machine shop is fairly uniform throughout the year, with peaks in cases of emergency mill repairs and during the mill off-season. Locomotive overhaul is carried out to a limited extent during the grinding season to relieve machine shop off-season work. Steam engine driven water pumps are scheduled for overhaul after the mill overhaul has been completed and after grinding operations are resumed.

A large portion of the work done by the machine shop personnel is performed within the shop, utilizing shop tools. These tools include lathes, hydraulic press, drill press, planer, boring machine and crankshaft grinder. From time to time machine shop personnel are called into the mill to perform repairs, regrooving of mill rolls, and such other work as cannot be expeditiously handled by mill workers.

2. *Welding Shop.*

This shop employs 5 men under supervision of a welding shop foreman. About 46% of its work is for the mill. In the off-season, welding shop work for the mill represents approximately 90% or more of the total man-hours. Most of the welding repairs to mill equipment are made in the shop, although personnel are sometimes dispatched to the point of breakdown.

Steel cane car repairs are made alongside the shop building by the shop personnel. Welding Shop employees also operate pipe rolls located in the pipe rolling shed. The pipe which is rolled is generally irrigation pipe 18 inches in diameter or larger. Welding of this pipe is performed by the shop welders. In this work the welding shop employees are assisted by employees from the blacksmith shop or caneloading machine repair shop.

Welding shop equipment consists of heavy pipe rolls, several sets of acetylene and cutting outfits, acetylene generators, and both stationary and portable welding generators.

3. *Blacksmith Shop.*

This shop employs 2 blacksmiths and 2 helpers under supervision of the caneloading machine repair shop foreman. About two days each week are spent by the blacksmiths and helpers on mill work, consisting principally

of constructing and reconditioning of cane carrier leveling and preparation knives. Cane car repair work, such as straightening of bars and channels, and repair of tractors and caneloaders, and field implement work, occupy the great percentage of the man-hours in the shop. The work of this shop is uniform throughout the year. Equipment in this shop includes 2 forges, an electrically operated hammer, and a variety of small tools.

4. *Tinsmith Shop.*

This shop employs a tinsmith journeyman and 2 helpers. Mill repair work here is negligible, although light sheet steel work, including maintenance and repair of roof gutters and down pipes, is performed by the shop personnel. Repairs of auto, truck, tractor and caneloader radiators are performed by the shop personnel.

The main work of this shop is the making and reconditioning of tin irrigation scoops. These scoops are used in quantity in the field for the purpose of deflecting water from concrete irrigation flumes to field irrigation lines.

5. *Caneloading Machine Repair Shop.*

Twelve employees and a foreman work here. They perform all major repairs and overhaul of caneloaders, grabs and miscellaneous field equipment. Men from this shop are occasionally called upon to assist in emergency mill repairs. They also go into the field to repair caneloading machines during the course of harvesting operations.

An important function of this shop is the construction of auxiliary field equipment, such as sub-soilers used in plowing, cane line reshapers used to maintain irrigation water lines in the field, and portable track line leveler attachments used in leveling the lines for laying portable tracks. Repairs on such auxiliary field equipment are

also made in this shop, with assistance from personnel of the tractor repair shop.

In the off-season, at least 8 of the 9 caneloading machines are completely dismantled and reconditioned. The 9th machine is reconditioned after harvesting has been resumed. In the off-season, 10 to 12 operators of caneloading machines are brought in to supplement the regular employees of this shop, and to assist in overhaul. Five cane grabs are overhauled and reconditioned during the off-season, and all other cane grabs are repaired. During the harvesting season, 3 new cane grabs are usually built.

Equipment in this shop includes 4 portable welding generators, and 3 portable welding generators mounted on trucks for field repairs. A hydraulic press, overhead crane, motor-driven grinders and a variety of small tools complete the shop equipment. Four welders in the shop take care of welding repairs in the field, and repairs to, and building of, new field equipment.

6. *Tractor Repair Shop.*

Seven employees normally work here, but in the off-season this number is supplemented by 12 to 15 tractor operators who are brought into the shop from the fields, to assist in repairs. All tractors used in the harvesting field are overhauled in this shop during the off-season. Tractors used for towing cane line reshapers are also overhauled during the off-season. Other tractors which cannot be overhauled during the off-season are scheduled for overhaul at a later date. This may mean that 6 or 7 out of a total of 48 tractors are left for operating season overhaul. Tractor engines are overhauled at regular periods.

Employees of this shop are sometimes dispatched for repair of tractors in the fields. They also assist in repair

of field implements in the caneloading machine repair shop.

7. *Garage.*

Personnel employed here numbers 24. Primarily work of the garage is to maintain and keep in repair plaintiff's 98 motor vehicles, consisting of 18 passenger vehicles, 48 pick-up trucks up to one ton, 27 heavy trucks from 1½ to 7 tons, 1 motorcycle, 2 fire trucks, and 2 panel trucks. Sixty-four of these vehicles are assigned to operations in the field, 12 to the repair and service shops, 1 to the mill, 1 to the hospital, 2 to the plaintiff's retail store, 7 for administration, 2 are fire trucks, and 9 to the motor pool.

Overhaul of cars and trucks is scheduled throughout the year, except that pick-up trucks used by the harvesting men are overhauled during the off-season. Truck drivers are not used to assist in truck or auto repairs, since there is generally a spare truck to drive when others are being repaired. All such work is performed by the garage mechanics.

Shop equipment consists of 4 overhead cranes, a hoist, valve grinding machine, brake drum lathe, boring machine, tire tools, and a variety of special tools.

Complete servicing equipment is also maintained, together with necessary personnel. Seven full-time employees and one part-time employee perform the lubricating and washing of vehicles. One employee dispenses gas and oil at the yard service station. Six persons are employed as helpers to garage mechanics when there is no service work.

Field service covers the daily lubrication of all equipment and the replenishing of fuel tanks. Tractors, caneloading machines, portable air compressor, diesel and

gasoline locomotives, and all field equipment are serviced daily by a total of 6 men. Two completely equipped service trucks manned by 2 men each service all field equipment, except that in the harvesting fields. In the latter case, a two-wheel trailer, tractor-drawn, is kept in each of the two harvesting fields. Oil, gasoline, diesel oil, greases and water are carried on the trailer together with power-operated grease guns. One man assigned to each trailer services the cranes and tractors in the harvesting fields. In this way service work can be done during lunch hour and slack periods without serious interference with harvesting operations.

8. *Electric Shop.*

Fifteen employees work in this shop. Three of these are mill electricians who divide their time between the mill and the shop, working two weeks in the former, then one week in the latter. The shop maintains electric pumps and transmission lines and performs domestic wiring repairs, including wiring of houses, and the building of new electrical appliances. Employees of this shop perform necessary work on electrical machines located in the other shops.

In addition to mill repair work done by the employees assigned as electricians to the mill, electric shop personnel may assist them in case of major electrical repairs required. About half of the work in this shop is for the mill. During the off-season, about 70% of the work is for the mill.

9. *Carpenter Shop.*

Twenty-five carpenters and two supervisors comprise this shop's personnel. They perform all carpenter work on the plantation, which includes construction of mill scaffoldings, construction and maintenance of railroad

trestles and wooden gates for flumes, and construction and maintenance of cane cars. In addition, they perform necessary maintenance work on the plantation buildings and houses. They also install and maintain steel and concrete pipe lines and siphons. Miscellaneous construction, such as construction of tool lockers, scrapers and strainers, is performed in this shop. Field work, including work on the flumes, railroad trestles, siphons and pipe lines, accounts for about 25% of the work of the employees. Mill scaffoldings and mill building repairs, construction of tool lockers, scrapers and strainers, account for another 10%. Maintenance and repair of plaintiff's buildings and housing account for another 45%. The remaining 20% of the work consists of construction and repair of cane cars. The work is uniform throughout the year, with little change between grinding season and off-season. During the off-season, additional men averaging from 10 to 15 may be brought in from the fields to assist in cane car overhauling and general carpentry work.

10. *Paint Shop.*

Here are employed 5 painters and a supervisor. They perform all painting work on plaintiff's buildings, including housing, and they also occasionally paint siphons and railroad trestles. As a general rule, they do not paint for the mill, this work being done by mill employees. Most of the time of the paint shop crew is devoted to painting of plantation buildings and housing throughout the year. During the off-season, an average of two additional employees brought in from the fields may assist in the work of this shop.

11. *Plumbing Shop.*

Six plumbers and one supervisor work here. They perform all plumbing work on the plantation, including the construction and maintenance of sewer and water

systems and plumbing for buildings and housing. Approximately 10% of the time is devoted to mill plumbing work, 15% to field work and the remainder to buildings and housing. Assignments vary little throughout the year. During the off-season, an average of two field employees may be assigned to the plumbing shop as helpers.

12. *Roundhouse.*

Reference to the roundhouse has already been made. It regularly employs two men in the shop, who perform the servicing, cleaning and firing of plaintiff's locomotives. Additional employees are occasionally assigned to this shop to assist in minor locomotive repairs.

Laboratory.

In a separate building, plaintiff operates a laboratory. Various chemical tests are made by the laboratory personnel in the course of all field and mill operations. This work is performed under the supervision of a chief chemist with the assistance of 13 chemists, testers and samplers. By performing careful analysis of various kinds relative to the cane and materials in the course of growing, cultivating and harvesting of cane, and the extraction of the sugar juices, all operations are controlled pursuant to scientific methods.

Determinations of the cane fiber in each field, or variety of cane, are made during each shift. Figures obtained are used in calculating bagasse weights, field distribution and extraction percentages.

Cane leaf analysis is made from samples of cane tops brought in each day and analyzed for green weight mixture, total sugars, nitrogen, potash and phosphate.

Daily tests are made for a variety of other purposes. Tests are made to determine the amount of field trash in

harvesting brought to the mill. Continuous samples are taken from the feed roller of the first mill each hour, and also at each change of harvesting, and records of ratios of cane to available sugar are obtained. Extracted juices are sampled to determine the sugar obtained from cane by the milling process. Extracted juices are used to calculate the weight of bagasse. Every three hours samples from clarified juice are taken, to reveal the relative amount of solids being removed by the lime and heat treatment of juices. Purity of syrup is checked. Samples of bagasse are taken every two hours, and ash determinations are also made twice daily, to determine the influence of different fields on the fireroom. Mixtures of sugar and molasses are tested to determine the amount of sugar lost in the filter cake.

Tests are also made of the mill boiler water, locomotive boiler water, steam pump boiler water, and pump water. Pump water from electric pumps and well water are sampled once each month. Wash water from the cleaning plant and condenser water are also analyzed each shift.

Concrete Products Plant

In a separate building, plaintiff operates its own concrete products plant. Six men ordinarily staff it, although the number varies from 4 to 10. Work is usually performed on a single shift basis, but occasionally two shifts are maintained.

This plant is engaged primarily in producing concrete irrigation flumes and water supply pipe. It also makes blocks, footings, sidewalk slabs and various other incidental concrete products required by the plantation. Crushed rock used in the manufacturing process is purchased locally, but from 80% to 90% of all cement used is obtained from the continental United States. The work

consists of setting up forms, mixing and pouring concrete, removing the previous day's products and arranging them in storage. Cement used is stored in cars which are set on the siding near the plant, or the cement is stored in the cement shed as part of the inventory of general supplies warehousing. In the latter case, unloading of cement is done by the warehouse personnel. Various activities requiring the flumes, pipe and other products receive them direct from the storage area where the products are stored.

The operations do not have any off-season. During the off-season, however, additional personnel may be brought in from the fields. In 1946, the plant produced approximately 46,000 concrete pieces, including flume sections, pipe and other products.

Storage of Supplies

Materials and supplies purchased for plantation operations are warehoused or stored in several separate buildings located in the plantation buildings and yard area. Value of supplies on hand averages $500,000. The total value of goods procured during a year, including stock and special order materials, averages over $1,000,000.

Most of the materials received were shipped to the plantation from Honolulu on the O. R. & L. Purchases may be either local or by order and direct shipment from continental United States. Freight received is placed in the proper warehouses by the warehousing personnel. In almost all cases railroad sidings permitted placement of the O. R. & L. cars next to the warehouse receiving the materials. The warehousing personnel is not responsible for, nor does it engage in, delivering materials to the various operations or shops.

The principal buildings in which the supplies and materials of the plantation are stored are the general sup-

plies warehouse and the heavy supplies warehouse. They house electrical goods, building hardware, paints, window screening, tractor and caneloading repair parts, copper tubing, pipe stock, metal shapes stock, galvanized sheeting, steel sheets and many other items.

The oil storage warehouse contains lubricants and a limited amount of paint.

Gasoline, fuel oil, diesel oil and kerosene were discharged directly from the O. R. & L. tank cars into storage tanks.

Most of the automotive parts and tractor, caneloading and miscellaneous parts are stored in the garage.

Cement is stored in a separate warehouse. Lime is stored in the mill in the lime room after being unloaded by warehousemen.

Lumber is stored in the open lumber yard adjoining the general supplies warehouse. Herbicides are also stored there.

Fertilizers are usually trucked directly from railroad cars to the field as needed; but if temporary storage is required, they are placed in the sugar warehouse.

The warehousing operations are handled as one unit under a warehouse superintendent with 13 employees. Five clerks perform the bookkeeping and handle accounts. The remainder of the warehouse personnel is employed in the unloading and storing of stocks and materials, keeping stock record cards and taking inventory.

Main Administration Office.

The main administration office is located about 1500 feet from plaintiff's buildings and yard area. The manager, assistant manager, and staff assistants have their offices here. Employees include the cashier, bookkeeper,

head timekeeper, 6 assistant timekeepers, 8 clerks, 5 stenographers and typists—a total of 22 employees working under the office manager and his assistant. Four timekeepers keep the time of the field employees; 2 keep the time of the shop, store, mill, hospital and village maintenance employees. These offices are where payroll records are maintained, and salaries and services paid.

Also housed in this building are the offices of the civil engineer, one assistant surveyor, 2 junior surveyors, and 2 rodmen, who work alternately in the field and in the office. There is also a draftsman employed in this office. The agriculturist and industrial relations sections are also located in the same building.

Stables.

The plantation has one main stable near the plantation buildings and yard area. It uses 38 horses and mules. Horses are used by the harvesting overseer to ride in the fields. Pack mules are used upon occasion to pack seed, fertilizer, broken concrete flumes and other things in and out of the cane fields. The plantation has several feeding stations for horses and mules where they are kept temporarily while work is being performed in a particular area. Three employees are assigned to the work of the stables.

Firewood.

Plaintiff maintains a splitting station in the mill yard. This is equipped with saw and splitting machinery generated by electric power. Firewood, cut by plaintiff's employees at various places on the plantation, is brought to the station to be sawed and split into pieces of appropriate sizes. The uses of such firewood are: sale of firewood to employees and pensioners, for cooking and heating purposes; for heating water at the village bathhouses;

and for starting small boilers and heating walls within the furnaces and pumps used to supply water for irrigating cane fields and for domestic and other uses in plantation villages.

Macadamia Nut Trees.

Macadamia nut groves are operated by plaintiff in an area approximating 121 acres. Such area is not suitable for sugar cane. During the period covered by this litigation, the trees had not yet reached maturity and no nuts were harvested. A nursery for cultivation of young macadamia trees is maintained on the plantation.

Plantation Villages.

At the time plaintiff was originally organized, there was no established community housing, or other facilities, in or near the area which plaintiff proposed to devote to the production and processing of cane. To establish a stable labor supply and house it at places convenient to plaintiff's purpose, plaintiff undertook to create a community, and to supply housing and other necessary services and facilities for its employees. Plaintiff constructed houses, developed services, and built up and established various facilities to serve the needs of permanent living, in plantation villages, of its required number of employees and their families. This was done over a period of years, resulting in the development of Waialua village and several small villages.

Waialua village has all the physical and visual characteristics of an established community and is similar to a typical small town of a farming community center. The area is crisscrossed with government roads and roads constructed and maintained by plaintiff. The community offers the usual services and typical commercial establishments to be found in any small town. There is a

company store, or retail store, with two branches; an automobile service station; and a hospital. These are owned and operated by plaintiff for plantation employees and their families and non-plantation persons. Plaintiff also built in this area two gymnasiums, one clubhouse, one athletic field, one beachhouse, one swimming pool, and two tennis courts, which are available to an athletic association, membership of which is composed both of plaintiff's employees and others in the community.

Additional services and establishments located in the community, which are independently operated, include ten general stores, two restaurants, two fish markets, one candy store, one hardware store, one clothing store, four barber shops, one beauty shop, one photographic studio, two automotive service stations, two motion picture theaters, and one bank.

> "It must be remembered that the whole plantation area, including the town, is owned by the plantation company, and although there are frequently many shops, such as drug stores, tailor shops, shoemaker shops and the like, that are privately operated, they rent their sites from the plantation and can remain only as long as the plantation permits them to do so. Anyone on any part of the plantation is a trespasser unless he has the permission of the management to be there. * * *" (Def. Ex. 3A, p. 71.)

Also located in the village are a post office, public library, five churches, one intermediate school, one high school, and one day-care center operated by the territorial school system.

For many years, plaintiff's employees occupied plaintiff's dwellings pursuant to a system of perquisites. Under this system, employees received housing, housing maintenance, water, firewood and kerosene fuel, electricity, medical care, recreational facilities and various maintenance services, including garbage disposal and street clean-

ing, as a part of their regular compensation as employees of plaintiff. This system was abolished by an agreement dated November 19, 1946, between plaintiff and the International Longshoremen's and Warehousemen's Union, Local No. 145-7, which acted as collective bargaining representative for most of plaintiff's non-supervisory employees. As part of the change thus inaugurated, the value of the perquisites previously allowed to employees was converted, at scheduled rates, into cash wages to be paid by plaintiff by way of wage increase, and thenceforth the employees commenced to pay cash, at scheduled rates, as non-employees do, for the continued furnishing by plaintiff of the aforementioned facilities and services, except that no charge, either to employees or others, was designated for garbage collection, sewage disposal, fire protection, maintenance and cleaning of village roads and similar village services, which continued to be provided by plaintiff. Neither was any charge designated for continued use of parks, playgrounds, plaintiff's clubhouse and gymnasium and recreational facilities generally.

An undisclosed number of plaintiff's dwelling houses are not equipped with tub or shower facilities. For the inhabitants thereof, plaintiff maintains bathhouses. From November 20, 1946, when perquisites were terminated, until April 30, 1947, no charge was made for use of the bathhouse, except as this was included in the rent paid by employees for the dwelling houses. Commencing May 1, 1947, and throughout the balance of the period covered by this litigation, plaintiff instituted a system of charges for use of the bathhouses: 50¢ per family per month, and 25¢ per month in the case of a single man without dependents.

At the present time, the dwelling houses owned by plaintiff number 820, all located on the plantation. Most of them surround the buildings and yard area located

near the mill. These houses, together with the business establishments of the community, constitute the village of Waialua. There are 335 houses which are scattered over the plantation, but these too are located in clusters and form small villages.

No employee covered by the existing collective bargaining agreement, including each employee defendant herein, is required as a condition of employment to live on the plantation or in plantation houses or to use any service or facility that the plantation may be in a position to render its employees. The relationship that exists between the plantation and its employees who live in plantation houses is that of landlord and tenant. However, of the total number of 959 non-supervisory employees of plaintiff, only 16 live off the plantation in houses not supplied or owned by plaintiff. The remaining employees and pensioners, together with their families, an aggregate of 2952 persons, all inhabit dwellings owned by plaintiff and generally located in Waialua village, or one of the other plantation villages owned by plaintiff. Plaintiff also rents to non-employees, totaling 421, dwellings not occupied by employees of plaintiff. Some of these persons work off the plantation altogether; others are persons who own, operate or are employed in the independently controlled businesses located in plaintiff's plantation villages.

The relationship between an individual's employment with plaintiff, and his occupation of a company-owned house, is shown, as testified to by 22 of the defendants, in the following tabulation:

Defendant	*How long employed by plaintiff*	*How long has lived in house owned by plaintiff*
Claunan	20 years	20 years
Crisostomo	26 years	26 years
Cumlat	Over 10 years	20 years
Faria	40 years	44 years; bought own home in June, 1950
Fujiwara	12 years	Lives with her family, which has occupied company-owned house for over 30 years.
Hayashi	Over 15 years	25 years
Holmberg	23 years	(Not testified to)
Izawa	22 years	36 years
Kobota	23 years	23 years
Koshiwabara	26 years	26 years
Lorenzo	14 years	14 years
Maneja	23 years	23 years
Mori	16 years	34 years
Oato	14 years	30 years
Pacheco	7½ years	27 years
Reyher	25 years	29 years
Robello (S)	28 years	45 years
Sunihara	20 years	26 years
Takata	20 years	39 years
Tanaka	11 years	All his life; was born in company-owned house
Watanabe	17 years	5 years
Yamada	24 years	All his life; was born in company-owned house; father was employee of plaintiff.

Plaintiff has established a fire protection system at the village of Waialua, and as part of that system operates two fire trucks. It also maintains fire hydrants in and about the village, the mill, various buildings in the yard area, and at various other locations.

There is a cemetery, located on plaintiff's property, for its employees and their families.

Prior to the abolition of the perquisite system, employees of plaintiff performed the work of maintaining and keeping in proper repair the dwelling houses owned by plaintiff, and the village area, and in supplying the usual services necessary to the operations of a community.

This has continued without change. Under the mentioned collective bargaining agreement, plaintiff expressly undertakes to provide dwelling maintenance and repairs, and village services; and in this connection, not "to make housing a profit-making venture, as such."

Organization of Plaintiff's Plantation.

At all times involved herein, plaintiff has been a member of the Hawaiian Sugar Planters' Association (HSPA), an organization of Hawaiian sugar-producing plantations. The association publishes a manual, portions of which were received in evidence as Defendants' Exhibit 2. Major enterprises of the association, as set forth in this manual, are quoted in a publication of the United States Department of Labor, entitled "The Economy of Hawaii in 1947", Bulletin No. 926, prepared and transmitted to the Congress of the United States pursuant to a requirement contained in the Organic Law of the Territory of Hawaii, 1900, as amended April 3, 1904, 33 Stat. 164. A copy of the publication was received in evidence as Defendants' Exhibit 3B. An earlier report of the Department of Labor, also rendered pursuant to the provisions of the Organic Law of the Territory, was published under the title, "Labor in the Territory of Hawaii—1939", Bulletin No. 687, House Document 848, 76th Cong., 3rd Sess. A copy of this report was received in evidence as Defendants' Exhibit 3A.

As described in the manual issued by HSPA, its functions are these:

> "The Hawaiian Sugar Planters' Association is an organization of plantations and individuals united for the purpose of cooperative improvement of the island sugar industry as a whole . . . The association's major enterprises are divided into the following departments: Experiment station, bureau of labor and statistics, labor saving devices committee, boiler in-

> spection committee, public relations committee, labor relations committee, legislative committee.
> "The association acts as a clearinghouse for all activities of the industry, making possible the freest and quickest interchange of information among the plantation executives. It maintains an office in Washington, D. C., which handles all relations of the Hawaiian sugar industry with Government departments and the Congress." (Def. Ex. 3B, pp. 34-35.)

This statement of the functions of HSPA is supplemented as follows:

> "The plantations are organized in an association which has planned for the Hawaiian sugar industries as a whole and which has developed the whole framework of economic relations necessary to their existence on an industry-wide basis, including shipping, the purchase of fertilizer, equipment and other supplies, the development of mainland refineries and markets, the supervision of management labor policies, the maintenance of research laboratories and the formulation of common programs of action for combating plant diseases, insect pests, and soil problems." (Def. Ex. 3B, p. 33.)

A further aspect of plaintiff's organization is found in its relationship to Castle & Cooke, Ltd., an agency or factor with which it is connected (Def. Ex. 2). Concerning the relationship that exists between plantation and factor, the HSPA manual declares as follows:

> "While each of the 36 plantations in the Hawaiian Islands is a corporate entity, all their affairs, except the actual operation of sugar growing, are centralized in what are known as factors, general agents offering a multitude of services to their clients. There are five principal factors: Alexander & Baldwin, Ltd., American Factors, Ltd., C. Brewer Co., Ltd., Castle & Cooke, Ltd., T. H. Davies & Co., Ltd." (Def. Ex. 3B, p. 35.)

The functions of the factors are summarized as follows in the HSPA manual:

> "Financial.—All fiscal matters of the plantations are handled by specialists in the offices of the factors. Moneys are received and disbursed, tax statements prepared, water and land rents paid or received, surpluses invested, or deficits advanced.
> "Experimental.—Engineers and other technicians are constantly seeking ways to improve the output of the various client plantations.
> "Shipping.—All the multitudinous detail of shipping huge quantities of sugar by water to the mainland is in the hands of the factors.
> "Merchandising.—Through their mainland buyers, the factors provide a steady flow of needed merchandise to plantation stores and to the plantations themselves. Because of the size of their operation, everything a plantation and its personnel need is provided at a minimum cost." (Def. Ex. 2)

The significance of the factor system is stated as follows:

> "The long-run result of the agency system was thus to deprive the plantations of their independence and to transfer control to the factors, a control which has been further unified by the coordination of policies and planning in the central offices of the Hawaiian Sugar Planters' Association." (Def. Ex. 3B, p. 35).

These developments, as well as many other aspects of plaintiff's operations, would seem to be unique to the Territory of Hawaii.

> "In the sugar-producing areas of Louisiana, Puerto Rico, and Philippines, and the sugar beet States, a farming system had been established before the development of the sugar industry. As the farmers in those areas already owned the land, sugar production grew along the lines of the established farming system.

> "The Hawaiian sugar industry, on the contrary, began on land which was undeveloped. * * * The land tenure system in Hawaii is different from that in any other part of the United States. It is a complex outgrowth of the feudal system which existed before annexation, under native Hawaiian royalty." (Def. Ex. 3B, pp. 32-33.)

The typical Hawaiian sugar plantation has been described as a "small world in itself" (Def. Ex. 3A, p. 70), whose "structural organization and functioning * * * is not unlike that of an army, with its clear cut lines of authority and its careful program for attaining given objectives" (Def. Ex. 3A, p. 14).

In immediate charge of plaintiff's plantation is its plantation manager, who is shown in a chart appearing under the designation "Plantation Organizations" in the published manual of HSPA (Def. Ex. 2), to have over-all control of all plaintiff's operations on the plantation, including conduct of plaintiff's villages. The designation of the manager, and the authority exercised by him, have been described as follows:

> "The manager of the plantation is appointed by the controlling 'factor' or agency. He has wide authority over the plantation and the mill and exercises a considerable influence over all community activities. * * *
>
> "The plantation manager was the chief official and central authority on all aspects of plantation life. In addition to his technical knowledge regarding sugar production, he had final responsibility in the direction and operation of sewerage and water system, of the fire-protection systems, police force, the railroads, and performed many of the functions that a mayor would perform. He even sat as an informal judge on cases involving minor disturbances and petty larcenies." (Def. Ex. 3B, pp. 36, 39).

Departmentalization of Plaintiff's Operations.

Plaintiff maintains an elaborate system of keeping detailed records of all its costs and expenditures. All pumps, locomotives, trucks, tractors, machines and implements of machinery are given identification number, and a record is made of the hours of work performed in their maintenance, repair, and utilization. For each employee a daily timesheet is kept showing in detail what his work consisted of, and to which operation or piece of equipment it pertained. This information is transferred to a weekly time record, which also carries data concerning the employee's rate of pay for the jobs performed by him and his total compensation for the week. By use of a further series of numbers, plaintiff records whether a given piece of work represents a capital improvement or a running expense charge.

It appears from the testimony of plaintiff's office manager (Tr. 43-53) that its practice for nearly 20 years has been to keep separately identifiable sets of employee records for its several departments. The main departments were described by him as follows:

1. Service Department, which includes the railroad and truck operations, and the various shops: ". . . such as the track shop (section repair shop), the P & H shop (caneloading machine repair), the welding shop, machine shop, paint shop, electric shop * * *".

2. Factory Department, which covers employees of the mill, commencing with "the employee who, when the cane car comes alongside the mill, weighs it and participates in the job of releasing the cane from the car into the container, the conveyor," and ends with the loading of sugar into freight cars or the warehouse adjacent to the mill.

3. Warehouse Department.

4. Field Department, which embraces "preparing for plowing, plowing, planting, ratooning, cultivating, irrigating, fertilizing, * * * up to the time that the cane was put on the main line of the plantation to take to the mill * * * in other words, where the permanent transportation line took over."

5. Village Facilities Department, covering painters, plumbers, carpenters, and others who repaired, maintained and serviced plaintiff's villages, and the dwellings located therein and occupied by plaintiff's employees.

In addition to these main departments, there are a number of others, also separately maintained. These were identified as the office department, laboratory, civil engineering, hospital, truck department, and agricultural control and research.

The foregoing lengthy statement of the extent, nature, and methods of operation of this large agricultural industrial enterprise is culled from testimony and largely from a detailing written stipulation between the parties of 771 pages, to which is attached a printed contract between the company and ILWU Local 145, Unit 7, together with numerous maps, charts, and tabulations, all of which is a material part of this trial.

This corporate enterprise was organized over a half century ago and has shown continuing expansion and development. With the exception of a few years, it has been quite profitable to its agents and shareholders.

Part II

Commerce Coverage.

The activities of plaintiff described above constitute the operation of an industry which is engaged in commerce and in the production of goods for commerce. In-

cluded in these activities are a number of separate and distinct enterprises appropriate to the production of sugar and molasses under the many and unique circumstances out of which plaintiff's operations have developed and taken form. In the conduct of these enterprises, plaintiff has assumed a variety of functions including those of farmer, carrier, manufacturer, shipper, and operator of village communities. Plaintiff is, and the court finds it to be, subject to the provisions of the Fair Labor Standards Act.

Coverage under the Act for employees, so as to entitle them to the benefit of minimum wage protection, and payment of overtime for hours of work in excess of 40 per workweek, depends on whether they themselves are engaged in commerce, or in the production of goods for commerce (Sections 6(a) and 7(a) of the Act). Whether an employee is to be held covered as one engaged in the production of goods for commerce, depends on whether he was employed either (a) in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods; or (b) in any process or occupation necessary to the production thereof (Section 3(j) of the Act). By Congressional amendment in 1949, the words "closely related" have been inserted in the aforementioned section before the word "process", and the words "directly essential" have been substituted for the word "necessary"; but this amendment was not made retroactive, and has no application to the issues of this case.

Plaintiff does not dispute that its employees, with the exception of a single group, are engaged in commerce or in the production of goods for commerce, within the meaning of the Act. The exception referred to relates to the work of certain employees who perform the work of repairing and maintaining plaintiff's dwelling houses, and furnishing related community facilities and services to

those who occupy such houses, these being in the ma
employees of plaintiff. As to such maintenance and r
pair employees, the contention of plaintiff is that, whi
so engaged, they are not in any process or occupatio
necessary to the production of goods for commerce. D
termination of this aspect of the case is deferred to a su
sequent place in these findings. It is appropriate to fi
at this point, and it is found by the court, that all activ
ties of the defendants other than those concerning whi
the issue of coverage under Section 3(j) is raised, a
and have been within the coverage of the law, such e
ployees being either engaged in commerce or in the pr
duction of goods for commerce.

Recovery under the Act has two aspects. An employe
is excluded if his activities are such that he is engage
neither in commerce, nor in producing goods for com
merce (or engaged in an occupation necessary to produ
tion). On the other hand, an employee may be covere
by the Act because he is engaged in the production
goods for commerce or in an occupation necessary to su
production, but may not be entitled to the overtime pr
tection of the Act because of the applicability of one
another of the exemption provisions. In this case, plai
tiff relies on the following exemption provisions: Sectio
13(a)(6) (agricultural activity), Section 7(c) (suga
processing), Section 13(a)(2) (retail or service establis
ment) and, in one instance, Section 13(a)(1) (administra
tive or supervisorial activity).

The record shows that in numerous weeks various de
fendants worked for hours beyond 48, and in all such in
stances, hours of work beyond 48 were compensated a
overtime rates; this includes employees engaged in agri
cultural activities. Overtime was also paid for hours i
excess of 8 per day, for work on certain designated holi
days, and when an employee was called to work on hi

scheduled day off. Since 1943, office and warehouse employees have received overtime for hours excess of 40 per week; and during the off-season, overtime has been paid for hours in excess of 40 per week to mill and shop employees.

The recovery of overtime pay sought in this action by defendants is limited to hours in excess of 40 per week, up to and including 48.

Agricultural Activities.

Plaintiff contends that all of its employees are employed in agriculture, as the term "agriculture" is defined in the Act, and are therefore exempt from the entire operations of the Act, pursuant to Section 13(a)(6) thereof. The definition of "agriculture" contained in Section 3(f) is sufficiently broad to cover every operation of preparing the soil, cultivation, growing of the sugar cane, harvesting, and any practice performed by a farmer or on a farm either as an incident to or in conjunction with such farming operations, including preparation and delivery to market where this is done by farmers. An employee is therefore exempt from the protection of the Act by virtue of Section 13(a)(6) if, but only if, his work falls within the specific language of Section 3(f). Such, too, has been the interpretation expressed by the Administrator of the Act (Interpretative Bulletin No. 14).

Under this definition, activities exempt from application of the Act with reference to the growing of sugar cane at plaintiff's plantation, include the preparation of suitable seedbed in the cane fields; planting; ratooning; cultivating, spraying of fields with insecticides and herbicides; elimination of competing weed growth; clearing of stones; spreading of irrigation water and operation of irrigation controls; laying, moving, or removal of field irrigation flume; patroling of irrigation ditch lines; clean-

ing and weeding of irrigation reservoirs, drainage ditches and tunnels; fertilizing and other activities to improve the physical condition of the soil; fire protection; activities designed to guarantee or improve the growth of the crop; grading of cane fields; filling of holes, gulches and ditches in fields; and harvesting operations performed to remove the crop from its growing position in the fields. These constitute farming operations, together with those activities of an incidental and conjoint nature, such as the picking up and reloading of cane stalks which have fallen from cars, the laying and shifting of sectional tracks in the fields, and the loading and moving of cane cars placed upon movable tracks and assembling the harvested crop at centralized points on the main line railroad, to commence transportation to the mill. Employees engaged in such operations, or in activities incidental to or in conjunction with them, are eliminated from the protection of the Act while engaged in such practices.

In accordance with these findings, the work of defendants which falls into one or another of the categories specified above, is exempt from operation of the Act, up to and including the point at which the crop is harvested. That point, which terminates the agricultural aspect of plaintiff's operations, occurs with the concentration of cars loaded with cane, upon the main line railroad operated by plaintiff, for transport, through intermediate processing, to the sugar refinery.

Transportation.

Plaintiff contends that the operation of its main line railroad, and the work performed by its locomotive engineers, firemen, brakemen, and other employees connected with its railroad transportation system, are exempt both under the agricultural exemption of Section 13(a)(6) and the sugar processing exemption of Section 7(c). The

latter section exempts employees engaged in the processing of sugar cane into sugar (but not refined sugar), but only when they are employed in a place of employment where the employer is engaged in the act of processing cane. The Administrator has interpreted this section to exempt employees who directly engage in processing activities, or who perform operations so closely associated thereto that they cannot be segregated for practical purposes, and whose work is also controlled by the irregular movement of commodities to the establishment; provided that such work is performed in the place where the processing actually occurs (Interpretative Bulletin No. 14). Congressional debates show that the purpose of the section was to relieve processors of seasonal agricultural commodities from the hour provisions of the Act so as to enable them more easily to conduct their operations during the peak seasons (Interpretative Bulletin No. 14).

Neither Section 13(a)(6) nor 7(c) applies to the activities of plaintiff's railroad employees. The train crews are not engaged in any act of producing sugar cane, or in any act incidental to or conjoint with the production of sugar cane; nor in processing cane into sugar at the mill, where the processing occurs. It is immaterial that they are employed by the same company which employs the farmhands and processing crews, since the determination of coverage must turn on the work of the employee.

> "The mere fact that in this case the owners of the farms are also the owners of the mill and the transportation facilities does not make transportation incident to farming.
>
> * * * *
>
> "There seems no rational basis for saying that simply because the ownership of the mill and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provi-

sions of the Act." (*Calaf* v. *Gonzalez*, 127 F.2d, 934, 937, 938.)

In determining whether an employee is exempt from the Fair Labor Standards Act either under Section 7(c) or Section 13(a)(6), the sole criterion is the character of the work performed by the employee, as disclosed by the record (*Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564; *A. B. Kirschbaum Co.* v. *Walling*, 316 U.S. 517; *Walling* v. *Snyder Min. Co.*, 66 F. Supp. 725). Section 7(c) does not embrace activities which, though related and necessary to mill operations, are not performed conjointly with processing at the establishment where processing takes place.

Railroad operation is a systematic business calling for the employment of skilled, experienced men, trained to quick, keen perception (not farmhands or mill hands) for handling locomotives and moving cars (not the goods in transit), and for the maintenance of roadbed, track and structures, and roundhouse care and servicing of locomotives—all specialized technical work. Railroading is not farming or processing, nor intended by the Act to be a part of either. Here, the transportation operations are very substantial, occurring over many miles of trackage, and hauling hundreds of thousands of tons each year; and the investment in the railroad system, amounting to nearly a million dollars, is quite considerable. It is notorious that in years past some sugar plantations in Hawaii hired a common carrier utility company, whether from economy or lack of capital, to install a railroad system, to perform the work of hauling cane from fields to mill yards.

If Congress had said that raw *sugar production* should be given an exemption from the operation of the Act, a different situation would be presented. That Congress saw fit not to do this, is in itself significant. The parts

of the Act here dealt with exempt agricultural or farming activities on the one hand, and processing on the other. The exemptions are separate and different, one of them applying both to minimum wages and overtime hours, and the other applying only to overtime hours. The transportation system of plaintiff is such that it constitutes a separate activity, so distinct in its nature that it is not reached by either of the exemptions.

Evidence given by plaintiff's office manager establishes that the employees of the railroad system are not attached to the Field Department or the Factory (Mill) Department, but instead are carried on the payroll records of the Service Department. Plaintiff has not treated the railroad employees as within the exemption of Section 13(a)(6), for during off-season these employees have been paid overtime after 40 hours of work. Subsequent findings on the activities performed by the railroad employees disclose that they are not ordinary farmhands, and do not perform agricultural activities. The railroad system is operated as a year-round pursuit; the element of seasonality does not enter into sugar production in the Territory of Hawaii. "Continuity of employment in the production of Hawaiian sugar is comparable to employment in manufacturing operations that have minor seasonal fluctuations rather than to typical mainland agricultural operations. The equable climate of Hawaii makes possible the continuous growth of sugar and it is technically possible to carry on every type of operation every day in the year". (Def. Ex. 3B, p. 64).

The operation of the railroad, as disclosed by this record, is not a practice performed "in conjunction with" farming operations. The activities of the railroad crew, and of those employed in activities relating to maintenance, upkeep and operation of the main line railroad system, occur subsequently to and independently of the

farming activities, albeit coordinated thereto. On its records of operating costs, plaintiff distinguishes between harvesting and main line transportation.

Nor is the operation of the main line railroad "incidental" to the farming activities. The Administrator of the Act regards transportation as more closely linked to processing operations. This has been his view since 1943 (Administrator's Release G-322). This view finds support in several decisions of the United States Court of Appeals for the First Circuit dealing with the Puerto Rico sugar industry (*Bowie* v. *Gonzalez*, 117 F.2d 11; *Calaf* v. *Gonzalez*, 127 F.2d 934; *Vives* v. *Serralles*, 145 F.2d 552). In those cases it is held that the transportation of cane is not incidental to farming and therefore not exempt under Section 13(a)(6) (*Calaf* v. *Gonzalez*, supra, 127 F.2d at 936-937.) In *Vives* v. *Serralles*, supra, the agricultural exemption was held to end at the point of concentration of harvested cane, and this point was fixed as of the time when cane loaded into cars was moved from portable track onto the main line permanent tracks; at this point the dividing line was fixed between activities exempt under Section 13(a)(6), and activities not so exempt.

This seems a useful, logical and necessary point of cleavage. It is also in accord with plaintiff's long-established practice, in the maintenance of its records, of separating field activities from transportation at the point where cane cars are placed on the main line railroad.

The sole object of plaintiff's operation is the production of sugar and molasses; and as these are manufactured in its mill, it might well be argued that operation of the mill is the dominant element, and that the growing of the raw material, sugar cane, is the subordinate or incidental element. It serves no purpose to resolve such an argument, for it is clear that plaintiff engages in many separate enterprises which, taken together, constitute a hybrid type

of business (see *Phillips Co.* v. *Walling*, 324 U.S. 490, at 495).

Hauling cane on the main line railroad is not a part of harvesting operations, since the gathering of the crop is completed on the fields on which it is grown prior to transportation; and such transportation constitutes neither a storing of such crops, nor transportation either to storage or market. Transportation, as plaintiff engages in it, is a necessary preliminary to the operation of plaintiff's processing business in its mill, where the cane undergoes a substantial change in order to create raw sugar, from which state it is later further transformed into refined sugar, the main product which is sold.

Portable track is laid on the fields where cane is grown; but the permanent main line transportation is not located on the farm in the same sense. True, it is located on the plantation property, but the word "plantation" refers simply to the geographical area of nearly ten thousand acres on which plaintiff conducts all its operations. Obviously cane is not grown on the right-of-way occupied by the fifty-six miles of permanent main line railroad track. Land is set aside exclusively for railroad purpose.

The point where the main line track is joined by the portable track is the point at which harvested cane is concentrated for transportation, and at this point the agricultural exemption activity ceases and the railroad operation commences.

The court finds that employees who are employed in or on the roadbed, track, structures, cars and locomotives of plaintiff's main line railroad system, including roundhouse and rolling stock, repair and building shops, and flagmen, watchmen and dispatchers, are not exempt from the overtime provisions of the Act.

Mill.

Plaintiff contends that employees whose work is performed in the mill are exempt under both Sections 13(a)(6) and 7(c). Mill activities commence immediately after the produce has been delivered into plaintiff's storage yard and brought alongside unloading platforms. Processing begins with the weighing, unloading and cleaning of the cane, and continues through crushing, juice treatments, crystallizing, and the bagging of the product and its removal from bagging and sewing machines, and its deposit in an adjacent warehouse, bins, tanks, or directly into cars or trucks for shipment. With these several operations through the factory, the processing is begun and finished in the place where the processor is so engaged; that is to say, the entire operating plant devoted to processing usage, whether within the mill itself or in the open yard, and whether the work there performed is mechanical or manual.

Such activities are not exempt under Section 13(a)(6). The mill operations are so conducted as to assume the character of a distinct business enterprise of an industrial nature; hence the mere fact that the processor is also engaged in producing a farm crop, and is processing only commodities grown by him, does not bring all of his operations within the Act's definition of "agriculture". The processing of sugar cane is surely no less an industrial operation than the stemming and fermenting of leaf tobacco; these activities were held to be non-agricultural because they changed the form and nature of the crop (*McComb* v. *Puerto Rico Tobacco Marketing Cooperatives Ass'n.*, 80 F.Supp. 953, affirmed 181 F.2d 697).

The mill operation is not a subordinate part of farming; it constitutes a large operation that follows the pattern of the industry in the Territory of Hawaii. A separate work force is employed for the processing operation in the

mill; it does no work in the fields; it is paid in accordance with a scale of hourly rates which are different and distinct from the system used, partly at contract rates and partly at hourly rates, to pay farm labor. On its payroll records, and in the keeping of its accounts for purposes of making income tax returns, plaintiff segregates mill employees from those engaged in field activities. During off-season, plaintiff pays overtime after 40 hours to employees of the mill, but not until after 48 hours to employees engaged in the farm work.

The Court of Appeals for this circuit has warned against enlarging the term "agricultural laborer" beyond the usual idea that it suggests. Enlargement beyond common usage would produce only confusion. The test laid down is whether the product has been subjected to industrial activity. Industrial activity commonly means the treatment or processing of raw products in factories (*North Whittier Heights Citrus Ass'n.* v. *NLRB*, 109 F.2d 76, certiorari denied, 310 U.S. 632, rehearing denied, 311 U.S. 724). This decision, although interpreting the agricultural exemption of a different act, has been widely followed in its basic reasoning, and has recently been reaffirmed in *Miller* v. *Burger*, 161 F.2d 992.

The determination of this court is suported by the views recently expressed both by the Solicitor of Labor and the Administrator of the Wage-Hour Division (2 CCH 14,068-14,071). Since 1941, the Administrator has taken the position that the exemption for agricultural employees "does not apply to sugar mill employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner in his own fields" (Administrator's Release R-1568, published in 1942 ed. WH Manual, p. 408). It is also the current view of the Board which administers the National Labor Relations Act, which by Congres-

ional direction contains the same definition of "agriculture" that is to be found in the Fair Labor Standards Act (*In Re Imperial Garden Growers*, 26 LRRM 1632; 91 NLRB No. 167). See also *Vives*, *Bowie*, and *Calaf* cases, supra.

It is clear, however, that the activities under discussion are covered by the sugar processing exemption. Accordingly the work of employees which takes place in the mill, in connection with the operation of processing machinery and activities closely and intimately connected therewith, are exempt under Section 7(c).

Several activities, while occurring in the mill, are not exempt because they do not constitute a part of the processing operations. Activities performed on bagasse, a by-product which is used for fuel, are not exempt because such activities do not constitute the processing of cane to obtain sugar or syrup, nor is it processed to obtain bagasse. The exemption is limited to the processing of cane into sugar or into syrup. This finding coincides with the long-established view of the Administrator (Interpretative Bulletin No. 14).

Where an employee's activities are connected with generation of electricity, some of which is used in the mill, but also in many other operations, including the lighting of employees' houses, administrative offices, repair and service shops, and the sale of surplus amounts to a public utility company, the exemption does not apply because of the commingling of exempt with non-exempt activities in the same workweek. The matter of commingling iis later discussed in greater detail in these findings.

Weekend Shutdown.

At the earlier trial, the defendants contended and the court held, that the activities in and about the mill during weekend shutdown, which consist of cleaning and minor

repairs, were not exempt under Section 7(c), for the reason that they occur at a time when no processing is taking place. In consequence, an employee who performed 40 hours of exempt work in connection with processing operations, and additional hours of work during the week-end shutdown, was held to be non-exempt for the entire week.

Upon additional evidence and a new record in this retrial, and reconsideration of this issue, it would appear that the week-end activities in the mill should not be held to defeat the exemption provided by Section 7(c). While the shutdown period consists of 24 consecutive hours, processing operations are not completely suspended during that interval. The crystallization processes of sugar remaining in the machines continue. Key employees in the fireroom, boiler room, and power house remain engaged in their regular activities. Though it is impossible to circumscribe with exactness the period during which no processing of sugar, in the literal sense, takes place, it would seem that such period comes to but a few hours, less perhaps than a full working shift, and partaking partly of the end of one shift and partly of the early portion of the next.

Employees who engage in the weekend cleaning and repair activities, work solely within the mill, and upon the very processing machinery which they operate during the remainder of the week. These employees also do the same kind of work while the mill is in operation, as an incidental activity connected with processing. In such circumstances, and in light of the exemption which Congress intended should be enjoyed under Section 7(c), the non-processing activities in the mill during weekend shutdown would appear to be too incidental and subordinate a factor to defeat exemption.

Accordingly, the court finds upon this record that the activities performed during weekend shutdown in the mill are not such as to defeat exemption, if it is otherwise applicable.

Off-Season.

The annual shutdown of the mill during the so-called off-season is a period when there is a total cessation of processing operations. Machinery and equipment located in the mill are completely overhauled, major repairs are made, and new machinery is installed. Generally the mill is shut down for a period of between 3 and 5 months. According to the evidence, plaintiff's off-season lasted 5 months in 1941; 3½ months in 1942; 3½ months in 1943; 4 months in 1944; 3½ months in 1945. In 1946, it ran from December 22 to February 9, a period of 7 weeks; this was an unusually short off-season, and doubtless relates to the occurrence of a strike lasting from September 1 to November 19, 1946.

During the off-season, mill employees engage exclusively in major cleaning and repair work, in overall preparation for the subsequent reopening of the mill. Additional men are brought in from other departments to participate in the overhaul which occurs in and about the mill, its machinery and equipment. Field employees are brought into the repair and service shops, to supplement the regular crews, because of the increased load of work. These facts not only establish the substantial nature of the off-season operation in preserving and enhancing capital investment*, but also account for the maintenance by plaintiff of a stable labor supply throughout the year, during

* "In October 1947 the HSPA Plantation News stated: 'Estimates of the amount of money being spent in 1947 and 1948 for improvements and new equipment or sugar plantations run as high as $20,000,000 and actual outlays may be even higher.'" (Def. Ex. 3B, p. 40.)

which the number of man-days of work performed does not vary, regardless of season.

Not a particle of sugar is processed in the off-season.

It is plain, and the court finds, that the work which takes place in the mill during off-season is not exempt under Section 7(c). This holding produces no inconsistency with the finding in regard to weekend shutdown, inasmuch as the two differ vastly in purpose, nature, scale, and duration.

It has long been the Administrator's view that the exemptions provided by Section 7(c) do not apply during any dead season or off-season, when processing activities are suspended entirely for a substantial and prolonged period of time (Administrator's Release R-1892; Jan. 25, 1943). This view has been uniformly upheld by the courts. Such was the ruling in the sugar industry in Puerto Rico in the case of *Maisonnet* v. *Central Colosso, Inc.*, 2 WH Cas. 755; and the decision has been the same in reference to the cotton seed processing industry (*Heburg* v. *Independent Oil Mill, Inc.* 5 WH Rcpts. 777 (W.D. Tenn.); *Abram* v. *San Joaquin Cotton Oil Co.*, 49 F.Supp. 393, 6 WH Repts. 312 (S.D. Cal.)).

It is also worthy of note that plaintiff has paid, for a number of years, and throughout the period covered by this action, overtime for hours of work in excess of 40, to all mill hands, employees of the repair and service shops, and others who participate in the off-season work in and about the mill.

Repair and Service Shops.

Plaintiff claims that the employees of its repair shops are exempt both as agricultural employees and under the sugar processing exemption.

The agricultural exemption of Section 13(a)(6) is inapplicable. Machine shop men, welders, electricians, painters, carpenters, and others employed in the repair shop department, perform no work of an agricultural nature, or at a time or place conjoint with or incidental to the farming process, or on a "farm" in the sense in which that term is used in the statute. Plaintiff itself has always regarded these employees as a unit separate from the field employees. In the structure of plaintiff's business, agricultural workers comprise the Field Department; employees of the repair shops comprise the Service Department. Workers in these respective categories are carried on separate and distinct pay-rolls. For cost accounting and income tax return purposes, plaintiff makes the same distinction in its records between these departments. As subsequent findings show, plaintiff has never treated repair shop employees as falling under the agricultural exemption, inasmuch as, during off-season, repair shop employees have been paid overtime for hours of work in excess of 40 per week; this, of course, is a payment not required to be made to employees engaged in agricultural work, whether it be off-season or grinding season.

Neither is Section 7(c) applicable to exempt these employees. Their work is not that of engaging in processing, or in any part of processing, nor is their work so integrated with processing as to be a portion thereof, incapable of segregation. Plaintiff has not treated the repair shop employees as part of its mill operations. Payrolls and cost accounting records for income tax purposes show the employees of repair shops separately from the mill hands. The activities of repair shop employees relate not alone to the mill, but to all aspects of plantation operations, including the field, village facilities, administration buiding, etc.

Repair shop employees are not occupationally attached to the mill. The headquarters out of which they work is in each instance a separate structure, in which they generally perform the major portion of their work, to which they regularly report each day, and in which they receive supervision and instructions. These structures are located at varying distances, up to 300 feet, from the mill. When occasion requires them to be elsewhere than in their shops, they perform services for every operation on the plantation, not the mill exclusively. Most of them do not generally perform work inside the mill building, except during off-season, when processing is suspended. They are under separate foremen and supervisors. There is no interchange shown, during the grinding season, of personnel, equipment, or materials between the mill and the repair shops.

It is plain that the repair shops constitute, and they are found to be, self-sufficient units, operated not as an incident to any other operation exclusively or dominantly, but rather as an integral part of the over-all combination of separate enterprises jointly conducted by plaintiff. If the employees of an independent machine repair shop performed the repair activities under discussion, they would not be exempt from the overtime provisions of the Act. The fact that such work was done by employees of plaintiff, under the circumstances here presented, affords no stronger basis for applying the exemption.

This determination coincides with the view expressed by the Administrator, both in his official releases (Interpretative Bulletin No. 14) and in the position asserted in a brief filed by him in this case with the Court of Appeals. Judicial authority treating of the same issue likewise supports this finding. In *Walling* v. *Bridgeman-Russell Co.*, 2 WH Cas. 785, (District) Judge Bell held that the term "place of employment" as used in Section 7(*c*), means

those portions of the establishment devoted by the employer to the actual processing operations, hence the exemption does not apply to employees who perform their duties at places not devoted to processing operations. He held the exemption inapplicable to electricians, carpenters, tinsmiths, firemen, engineers, garage employees who washed and greased trucks, watchmen, janitors, warehousemen, and laboratory technicians, although the degree of separateness and specialization in that case does not appear to approach the situation in the instant case.

In *Walling* v. *DeSoto Creamery & Produce Co.*, 51 F. Supp. 938 at 943 (D.C. Minn.), employees who worked at grading, packing and loading poultry, in a room adjacent to the one where slaughtering and dressing operations occurred, were held not employed in a place of employment where the exempt processing activity was performed; this was the holding despite the fact that the activities held non-exempt were performed on the processed product. In the case at bar, the employees under discussion do not handle cane, sugar, syrup, or molasses; their activities are confined to working on machinery, equipment, and structures.

The crucial point is that Section 7(c) does not exempt entire industries from the overtime provisions of the Act, but only the specific processes therein mentioned. Thus, while the activities of employees engaged in handling, slaughtering and dressing operations in a meat packing plant were held exempt, employees in other departments, such as those engaged in meat-curing and sausage-making, were held outside the scope of the exemption provided in Section 7(c) (*Fleming* v. *Swift & Co.*, 41 F. Supp. 825, affirmed 131 F.2d 249). To the same effect, see *Colbeck* v. *Dairyland Creamery Co.*, 17 N.W. 2d 262 (S.D.). See also *Shain* v. *Armour & Co.*, 50 F. Supp. 907 and *McComb* v. *del Valle*, 15 Lab. Cas. 74,679 (D.C. P.R.).

Mill Village Maintenance.

Plaintiff contends that its employees who perform repair and maintenance work on company dwellings occupied by plaintiff's employees, and who supply village services and facilities to the employees living in the plantation villages where these houses are located, are excluded from coverage under the Act upon the ground that they do not work in any process or occupation necessary to the production of goods for commerce. Alternatively, if this contention is overruled, plaintiff invokes the exemptions of Sections 13(a)(6) and 13(a) (2).

The question of coverage is plainly one that must be decided upon the facts peculiar to each case. The Administrator has expressly left the question of coverage open, evidently recognizing that decision might well vary with the given situation. No court decision has been found that passes squarely on facts similar to those here present.

Work of a repair and service nature has frequently been held covered by the Act as a type of activity necessary to the production of goods for commerce. A few decisions of this kind may be noted: Repair of boats used in interstate commerce (*Walling* v. *F. S. Lowe & Son Boatways*, 5 WH Cas. 937); mechanical work for an independent machine corporation whose chief business consisted in servicing the tools and equipment of a company engaged in mining and shipping of coal in interstate commerce (*Princeton Mining Co.* v. *Veach*, 5 WH Cas. 734); painting, repairing, and reconstructing trucks which were brought to the employer's plant and by customers who owned them, and which were used in the interstate transportation of goods (*Walling* v. *Sturm & Sons*, 6 WH Cas. 131); maintenance men, mechanics, and mechanics' helpers who worked at garages on trucks leased by their employer to customers making substantial use of the trucks

in interstate commerce (*Skidmore* v. *Casale, Inc.*, 6 WH Cas. 33). Also to the point are *Claudio* v. *Sobrinos De Portilla, Inc.*, 5 WH Cas. 484, holding the Act applicable to employees of a corporation operating a factory and machine shop, the greater part of whose business was the repair and servicing of industrial concerns producing sugar for commerce; and *Agosto* v. *Rocafort*, 5 WH Cas. 176, holding the Act applicable to a mechnic engaged in repairing and overhauling trucks operated by an employer in a trucking business used chiefly to transport cargo from concerns producing sugar, to be shipped in commerce.

Maintenance workers, watchmen, and similar employments have also been held covered. These employments were held covered in *McComb* v. *Russell Co.*, 17 Lab. Cas. 76,781; by the United States Court of Appeals for the Fourth Circuit in *Slover* v. *Wathen*, 140 F.2d 258; by the United States Court of Appeals for the Seventh Circuit in *Engebretsen* v. *E. J. Albrecht Co.*, 150 F.2d 602; and by the Supreme Court in *Walton* v. *Southern Package Corp.*, 320 U.S. 540, and in *A. B. Kirschbaum Co.* v. *Walling*, 316 U.S. 517.

These decisions are readily distinguishable from the situation at hand, in that the employees involved therein performed work or services in, upon or directly relating to the very buildings, equipment, or instrumentalities which were used in the production of goods for commerce. The case here presented is one step removed, in that the repair and maintenance work is performed in and upon, and the service is rendered for the dwelling houses inhabited by plaintiff's production employees.

A series of cases, which have come to be known as the cookhouse or cafeteria cases, deal with an analogous situation. In *Consolidated Timber Co.* v. *Womack*, 132 F.2d 101, the United States Court of Appeals for this circuit

held the Act applicable to a baker employed in one of two cookhouses operated by a corporation engaged in logging and lumbering. It was held that the cookhouse was a necessary part of the company's production of goods for commerce, operated not with the intent or purpose of showing a profit to the owners from the sale of food or service, but rather to render a necessary assistance to the company's business, which was that of producing logs in interstate commerce:

> "The cookhouse was not a separate or independent establishment; it was actually a *part* of the company's facilities—a link in the chain—whereby it operated its business and a means whereby it accomplished the purpose of its existence. Neither cookhouse was in competition with any private restaurant for there is no evidence of an effort to secure the patronage of the general public; the service was sold at cost to those whom the cookhouse was intended to serve: the loggers. The principal activity of the cookhouse definitely was not to furnish service to the consuming public, as such, but was to serve the employees of the company." (Page 107)

The job of the cookhouse employee was held to assist the activities of the loggers by keeping their board close to their place of work, thus rendering it easier for the corporation to maintain a proper organization of its loggers, and forwarding their work by furnishing the food whereby the men were given the strength to pursue their labors.

Many cases are in accord with this decision. The United States Court of Appeals for the Eighth Circuit, in *Hanson* v. *Lagerstrom*, 133 F.2d 120, followed our circuit, holding the Act applicable to one who assisted in preparing and serving meals, and maintaining a kitchen operated to benefit employees of a concern engaged in handling pulpwood, which was then converted into products sold in interstate commerce. A federal district court in Indiana held the Act applicable to a night manager

employed by the owner of a cafeteria located in a war plant, to serve employees working in the plant who manufactured war materials shipped in interstate commerce; the cafeteria, though independently owned, was held an integral part of the organization of the manufacturer, and a necessary part of the facilities used by the manufacturer (*Ferguson* v. *Prophet Co.*, 6 WH Cas. 284). A federal district judge in Massachusetts similarly applied the Act to employees working in their employer's commissary, which was located in a railroad station and served as a kitchen and storeroom for the employer's retail stands and train service department in the same station, and for the employer's retail stands in railroad stations in other cities (*Walling* v. *Armstrong Co.*, 5 WH Cas. 474). Employees in a canteen and cafeteria operated, on premises of Republic Steel Corporation, by an independent restaurant concern were held covered in *McComb* v. *Factory Stores Co.*, 81 F. Supp. 403; coverage of the Act was there decided in favor of cooks, assistants, counter girls, dishwashers, and porters. The Supreme Court of Michhigan held the Act applicable to employees engaged in preparing food at plant cafeterias owned and operated by a large industrial corporation which sells food solely to plant workers during their lunch and rest periods (Basik v. General Motors Corp., 5 WH Cas. 1061).

The foregoing decisions turn on the finding that the work performed by such service employees is itself a part of an over-all integrated effort for the production of goods for commerce. Supplying such services, and maintaining such supply, constitute activities covered by the Act, where they have a close and immediate tie with the process of production for commerce. Although each case depends on its own facts, the decisive elements are suggested by our Court of Appeals in *Womack's* case, supra, 132 F.2d at page 107:

> "Was not the greater number of diners at the cookhouses engaged in the production of goods for commerce? Were not the cookhouses an integral part of an organization devoted to the production of goods for commerce? Does it not follow, reasonably and logically, that the greater part of the services rendered by the cookhouses was in interstate commerce rather than intrastate?"

Three decisions reaching a contrary result are easily distinguishable, and are based upon reasoning which supports the principle of *Womack*. *Kuhn* v. *Canteen Food Service, Inc.*, 77 F. Supp. 585, dealt with a restaurant operated, not by an employer engaged in the production of goods for commerce, but by an independent concern: and it was not operated as a part of facilities devoted to production of goods for commerce. Judge LaBuy accepts the principle laid down in Womack's case, saying, at page 591:

> "The Court is convinced that in cases where the production of goods is in an isolated spot where board cannot readily be obtained by employees, that (sic) it would be necessary for the company to furnish board to its employees, and in such cases the furnishing of the board would be a necessary part of the production of the goods."

Again, in *Bayer* v. *Courtemanche*, 76 F. Supp. 193, 196, a similar case was presented. Judge Smith there said:

> ". . . there has been no showing that the time for lunch was too short for the production workers to eat outside, nor that restaurants were not available nearby, nor that the service in them was inadequate for the workers in that area, nor, indeed, that any great proportion of the production employees of the plant availed themselves of the cafeteria at meal times. "Had any of these elements been shown by the plaintiff, it might be that his work could be considered necessary * * *"

Judge Yankwich also found against coverage in *Tipton* v. *Bearl Sprott Co.*, 9 WH Cas. 620, where a restaurant, not operated by Columbia Steel Company but by an independent contractor, was maintained at most as a convenience for employees at Columbia Steel, at a location in a city where numerous other restaurants were immediately available to Columbia's production workers. In a well-reasoned opinion, the court reviews the cases and bases its decision upon the fact that the cafeteria was operated independently of the company producing goods for commerce, was not located in any isolated area, was not shown to be patronized by any substantial number of the steel company's employees, and represented only a convenience to such employees rather than a necessity; furthermore, that the steel company did not control the hours, wages or conditions of work of the cafeteria employees, and such cafeteria was in no way a part of Columbia's effort to produce steel.

In the case at bar, existing conditions are such that it has been necessary for plaintiff to furnish housing and community services to its production employees. The plaintiff's villages are located both in isolation and insulation from the rest of the Territory; these villages are located upon plaintiff's lands, and are many miles from any city. No other housing in adequate quantity, except that provided by plaintiff, is shown to be available to plaintiff's employees. Historically, paintiff constructed these houses and estabished these villages for the purpose of supplying necessary dwellings for a stable labor pool which plaintiff desired to be in close proximity to its operations.

Maintenance of village facilities and dwelling repairs were carried on by plaintiff as a part of its over-all production operations, not as a matter of mere convenience for its employees. Many of the employees of plaintiff

who work on dwellings, and in connection with village facilities, are a part of plaintiff's production operations, being attached to various of the repair shops, such as the carpenter, plumbing and paint shops, which perform activities for the mill, in regard to production machinery and equipment, and for administration and office buildings. Housing and community services represented part of the wage payment made to plaintiff's employees in the form of perquisites. Abolition of the perquisite system in 1946 did not nullify either the original purpose of the housing, or the continued effectuation of that purpose. Indeed, plaintiff expressly undertook a contractual obligation with the union representing most of the defendants, to continue to furnish repairs and maintenance of housing, and village community services. At the same time, plaintiff expressed its intention not to make housing a profit-making venture as such.

More than 98% of plaintiff's employees inhabit its houses, and rental to outsiders is negligible; and among the latter are various individuals to whom plaintiff also rents space to operate commercial establishments needed in the villages. Doubtless the present availability of housing for rental to outsiders is related to the continuing mechanization of plaintiff's operations which naturally decreases the number of employees needed. The fact that the present relationship between plaintiff and its employees in regard to housing appears to be one of landlord-tenant, does not conceal the underlying realities. It is the duty of the court to look through the form to the substance. The 1946 conversion of housing and facilities into cash values, merely meant that these amounts were added to the employee's paycheck, but he paid back the same amount to the company as rental. Hence the form changed, but the substance remained unchanged.

Upon the foregoing facts, there can be no question that the operation and conduct of village facilities and housing are historically and presently an integral part of plaintiff's production effort. The only relevant court decisions passing upon repair work to homes occupied by employees of a concern engaged in interstate commerce, deal with city homes occupied by employees under genuine lease or sale arrangements. One such case is the decision of the federal district court for the Western District of South Carolina in *Morris* v. *Beaumont Mfg. Co.*, 6 WH Cas. 843. The act was there held inapplicable to carpenters and painters engaged in the construction, maintenance and repair of residences rented by a textile manufacturing concern to its employees. The company owned an average of 280 dwellings occupied by an average of 488 employees. The total average number of employees of the company was 1107. Occupancy of company-owned residences was optional with employees, and on the average more than half of them lived in homes owned by themselves or rented from parties other than the employer. All the residences owned by the company were in the city of Spartanburg, located on city streets, and interspersed with other dwellings not owned by the employer. The company's manufacturing plant was enclosed by a substantial fence within which all of its manufacturing activities were carried on; none of the houses were contained within the fenced area. The key to Judge Timmerman's decision is seemingly his finding that "The defendant does not maintain a mill village in the sense that the term is commonly used."

A similar decision is that of the District Court for the Western District of Virginia, in *Coomer* v. *Durham*, 9 WH Cas. 605. The employer was a contractor who contracted and sold houses to the employees of a company engaged in the production of coal for interstate commerce. The

coal company had at one of its operations 547 employees, of which number 412 lived in houses not owned by or rented from it, 75 lived in a village in houses purchased from the coal company, 42 lived in houses purchased by them in an entirely different village, and only 16 lived in company-owned houses. At all of its operations, the company had a total of 3251 employees, of which number 1334 lived in houses rented from it, 217 lived in houses purchased from the company, and 1700 lived in their own individual houses which had never been owned by the company. The villages in which the employees lived were not isolated communities; they were located on state highways linked with the federal highway system, and near to other communities. It was found that the coal company, from the start of construction, "planned to sell nearly all these houses and did sell virtually all of them just as soon as they were completed." Such sales, it was pointed out, were accomplished by a conveyance in fee simple by deed to the purchasers without restriction as to subsequent lease or resale; and subsequently to the original purchase, some of the purchasers had either rented or sold their houses to persons in no way connected with the coal company. Judge Barksdale found that it was not necessary, during the period of time covered by the case before him, for the coal company to provide housing for its employees. The contractor's employees were therefore held not covered by the Act.

In *Wilson* v. *Reconstruction Finance Corp.*, 5 Cir., 158 F.2d 564, 565, certiorari denied, 331 U.S. 810, the Act was held inapplicable to employees acting as firemen at a housing project, and to others who supplied water service to the inhabitants thereof, the inhabitants being production employees of two corporations engaged in interstate commerce. However, the firemen and water plant operators were employees of an independent contractor not so

engaged in interstate commerce. The court there said, "The independence of the employer of the plaintiffs and the employers of the housing occupants insulates the plaintiffs from the status of producers of goods for commerce."

The last three decisions, while holding against coverage, present a rationale which, when applied to the facts of the instant case, support a different conclusion. In origin and history, Waialua village was and remains a mill village, company-owned and company-controlled, in every sense of that term. The same is true of the smaller villages on plaintiff's plantation where its employees occupy company-owned dwellings. All these villages, and all of the buildings, houses, and other facilities existing therein, were created by plaintiff for the purpose of providing housing and community services for a stable supply of labor. These villages are located within the plantation area, and Waialua, the largest of them, was established in close proximity to the mill. Not only does plaintiff own the homes, but also the other services and buildings necessary to community life—the hospital, gymnasium, parks, playground, clubhouse. The opportunity to occupy or use any portion of these communities, their facilities and the dwelling houses therein, has always rested exclusively with plaintiff. Ingress and egress are subject to plaintiff's control.

While plaintiff's employees are not required under the collective bargaining agreement to live in company-owned houses, there is no evidence that they have any real choice over the matter. The possibility of purchasing homes of their own seems to be a remote and rare occurrence; the unique system of semi-feudal land tenure plays a role. Only to an inconsequential extent is it possible for employees to rent, at suitable locations near to their places of work, houses owned by anyone other than plaintiff. It

cannot be assumed to be accidental that, of 959 non-supervisory persons employed by the company, in the period to which this suit relates, only 16 lived in houses other than those owned by plaintiff.

The work done by plaintiff's employees in maintaining and keeping in proper condition the housing occupied by its production workers, is neither trivial nor insignificant to plaintiff's business of producing sugar. It represents a material contribution to plaintiff's production of sugar. Without the performance of such repair and maintenance work, plaintiff's housing and village facilities would fall into disrepair. Its employees would be unable to continue to occupy them, and there would be marked interference and damage to the continuation of production of goods for commerce. The close relationship between the maintenance of the mill villages and the production of cane and manufacture of sugar, is exemplified by the fact that mill village maintenance employees, such as carpenters, painters and plumbers, perform their work indiscriminately both on the buildings and facilities used by plaintiff to conduct its production operations, and on the dwelling houses. Occupation by plaintiff's production employees of its housing is to be considered in connection with the fact that plaintiff hauls many of its employees from their homes in the mill villages to and from their job sites. In the operation of its business, plaintiff has departmentalized its activities: the plumbing shop and paint shop have personnel comprising intact groups who perform necessary work both on plaintiff's production buildings and its housing. In the case of carpenters, all are attached to the carpenter shop, without segregation between village carpenters and industrial carpenters, except as to timekeeping.

It is in the light of these facts that decision must be made of the question presented. That question is whether

the work of mill village repair and maintenance is "necessary" to the production of goods for commerce. Judge Healy has pointed out that the term "produced" is broadly defined in the Act (*Culver* v. *Bell and Loffland, Inc.* 9, Cir. 146 F.2d 29, 32. The Supreme Court has said that the word "necessary", as employed in the Fair Labor Standards Act, should not be applied in a manner that would give it an unwarranted rigidity; it is a word "to be harmonized with its context" (*Armour & Co.* v. *Wantock*, 323 U.S. 126, 130-131. The issue there decided was whether a firefighting service was sufficiently necessary to the operation of a soap factory, to entitle such service employees to coverage under the Act. The Supreme Court said:

> "* * * no hard and fast rule may be transposed from one industry to another to say what is necessary in 'the production of goods.' What is practically necessary to it will depend on its environment and position * * * What is required is a practical judgment as to whether the particular employer actually operates the work as part of an integrated effort for the production of goods.
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> * * * *
>
> "A court would not readily assume that a corporation's management was spending stockholders' money on a mere hobby or an extravagance. The company does not prove or assert that this fire protection is so unrelated to its business of production that it does not for income-tax purposes deduct the wages of these employees from gross income as 'ordinary and necessary expenses.'"

(No claim is advanced by plaintiff that its expenditures for wages to its employees and for other purposes in the maintenance and repair of dwellings and village facilities, are not included in its income tax returns as part of its expenses of operation, 26 USCA Int. Rev. Code Section 23(a)(1).)

> "More is necessary to a successful enterprise than that it be physically able to produce goods for commerce. It also aims to produce them at a price at which it can maintain its competitive place, and an occupation is not to be excluded from the Act merely because it contributes to economy or to continuity of production rather than to volume of production." (*Armour & Co.* v. *Wantock*, Supra.)

Accordingly, the work performed by carpenters, painters, plumbers, and others was covered, because they contributed to "the maintenance of a safe, habitable building" (*A. B. Kirschbaum* v. *Walling*, 316 U.S. 517, 524), which was, in turn necessary to house, maintain, and keep in desired proximity to plaintiff's operations, employees whose work involved them directly in the production of goods for commerce.

Whether, since the amendment in 1949 of Section 3(j), such employees are covered for future work, is not here presented. The sole question for determination deals with the period between November, 1946, and September, 1947, which antedates the recent amendments. Hence, decision here is confined to the Act as it read at the time of the activities over which the suit has been brought and no intimation is intended as to the effect, if any, of the 1949 amendments of Section 3 (j), particularly since the factual picture may have undergone change since 1949.

It remains to determine whether the exemptions of Section 13(a)(6) or 7(c) are applicable. For the reasons heretofore given in respect of employees in the repair shops, neither exemption applies.

Commingled Work.

There are numerous instances shown of the performance by a particular defendant, within a single workweek, of some activities which are exempt under either Section 7(c) or 13(a)(6), and other activities which are non-

exempt. As a general rule, the engagement by defendants in non-exempt activities, in those workweeks where this is found to be the fact, was substantial; and even in those instances where such engagement was small in amount, it was regular and recurring.

As construed by the Supreme Court, the statute makes each workweek the standard to be considered in determining the applicability of overtime provisions (*Overnight Motor Transportation Co.* v. *Missel*, 316 U.S. 572, 579). It would be contrary to the Congressional intent to grant the exemption for a workweek in which the employee performed some activities which Congress intended to be non-exempt. The Administrator has long held the view that, where exempt and non-exempt activities are commingled in a single workweek, the entire week is nonexempt (Interpretative Bulletin No. 14).

This view has been uniformly sustained in an imposing array of decisions. *Fleming* v. *Swift & Co.*, 41 F. Supp. 825 (N.D. Ill.); aff'd. 131 F.2d 249; *Walling* v. *DeSoto Creamery & Produce Co.*, 51 F. Supp. 938 (D.C. Minn.); *Shain* v. *Armour & Co.*, 50 F. Supp. 907 (W.D. Ky.); *Walling* v. *Peacock Corporation*, 58 F. Supp. 880 (E.D. Wisc.); *Weeks* v. *Postal Tel.*, 1 WH Cas. 1177; *McComb* v. *Puerto Rico Tobacco Marketing Cooperative Ass'n.*, 80 F. Supp. 953 (D.C. P.R.), aff'd., 1 Cir., 181 F.2d 697; *Anderson* v. *Manhattan Lighterage Corporation*, 2 Cir., 148 F.2d 971, certiorari denied, 326 U.S. 722; *Jordan* v. *Stark Bros. Nurseries & Orchards Co.*, 45 F. Supp. 769 (D.C., W.D. Ark.); *Walling* v. *Bridgeman-Russell Co.*, 2 WH Cas. 785 (D.C. Minn.); *Wabash Radio Corp.* v. *Walling*, 6 Cir., 162 F.2d 391; *McComb* v. *del Valle*, 15 Lab. Cas. 74,679 (D.C. P.R.); *Sykes* v. *Lochmann*, 156 Kans. 223; 132 P. 2d 620; *Gaskin* v. *Clell Coleman & Sons*, 5 WH Repts. 581 (Ky. CC, *Mercer Co.*, 1942); *Loeb* v. *Ideal Packing Co.*, 7 WH Repts. 397 (Wisc. CC, Mill Co., 1944).

In the case at bar, there are a few scattered instances where a defendant was assigned to perform exempt activities for virtually the entire week, but also performed a non-exempt activity for a small portion of time, sometimes as little as an hour or less. It is in accord with judicial authority to stand on the plain meaning of the statute, and to hold the exemption inapplicable, no matter how little time was devoted in the particular workweek to non-exempt work. Departure from the statute would create rather than obviate practical problems, including the problem of where and at what point to draw the line. The instances where such a small amount of non-exempt work was performed in a week which otherwise would be exempt, are few and scattered. They do not present a consistent or recurring pattern, and it is not claimed by plaintiff that it cannot easily avoid such situations by assigning the non-exempt activity to some other worker who normally performs that type of work as a regular part of his duties.

Accordingly, where in any given workweek a defendant engaged in activities some of which were non-exempt, none of the exemptions pleaded by plaintiff applies to such workweeks despite the fact that nearly all activities performed therein were exempt.

Retail Exemption.

Plaintiff urges that Section 13(a)(2) is applicable to some of its employees. This section exempts any employee engaged in a retail or service establishment the greater part of whose selling or servicing is in intrastate commerce. Upon the record of this case, it does not appear that any of the defendants fall within that provision; hence it is found that Section 13(a)(2) was inapplicable to all of the defendants.

Liquidated Damages.

In subsequent findings, determination is made that certain of the defendants are entitled to recover stated amounts as overtime compensation due and owing to them. Defendants seek liquidated damages in amounts equal to the unpaid overtime compensation found due to them.

The Act provides that any employer found liable for unpaid overtime wages, shall also be liable "in an additional equal amount as liquidated damages" (Section 16 (b)). In 1947, Congress passed the Portal-to-Portal Act, which contains provisions under which liability for liquidated damages, as well as unpaid overtime wages up to May 14, 1947, may be affected. Under Section 9 of that Act, no employer shall be subject to any liability, either for overtime wages or liquidated damages, if he pleads and proves that his failure to pay overtime was in good faith, in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation of any agency of the United States, or any administrative practice or enforcement policy of any such agency with respect to the class of employers to which he belonged; but this is expressly limited to claims based on an employer's failure to pay overtime prior to the date of enactment of the Portal-to-Portal Act, which was May 14, 1947.

Under Section 10, a second special defense is provided, which is more narrowly drawn with respect to the number or type of agencies of the United States on whose conduct an employer places reliance. Under this section, no employer subject to the Act shall be subject to liability for overtime compensation or liquidated damages, based on the employer's conduct on or after May 14, 1947, if he pleads and proves that his conduct was in good faith, in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpreta-

tion, or any administrative practice or enforcement policy of the Administrator of the Wage and Hour Division of the Department of Labor.

A final special defense is created by Section 11, which gives the court discretion to award no liquidated damages, or award any amount thereof not to exceed the amount specified in Section 16(b) of the Act, if the employer shows to the satisfaction of the court that his act or omission giving rise to the action was in good faith, and that he had reasonable grounds for believing that it did not constitute a violation of the Act.

Plaintiff, by its pleadings, raised all three of these special defenses. However, these defenses were abandoned at the trial; no evidence was offered by plaintiff in support of these defenses, and nothing was "proved" or "shown to the satisfaction of the court" to support these pleas. In the absence of evidence to bring into operation any of the mentioned special defenses, there is no basis on which to deny full liquidated damages to those defendants who are entitled to recover, inasmuch as such is the requirement of Section 16(b) of the Act.

Costs and Attorney's Fees.

The defendants pray for costs and attorney's fees. The Act provides that the court "shall, in addition to any judgment awarded * * * allow a reasonable attorney's fee to be paid, * * * and costs of the action" (Section 16 (b)).

The amount of attorney's fee awarded should bear proper relationship to the facts of the case, and should be reasonable in light of the quantum of service rendered, the difficulties presented by the problem and issues involved, and the extent of recovery achieved.

The court will award an attorney's fee which takes into account the foregoing factors as they relate to the facts of this case, the occurrence of two trials and one appeal,

and the total recovery for all defendants, which, including liquidated damages, amounts to $6,729.02.

Costs of suit will also be ordered paid to the defendants who prevail in this action.*

Opinion of United States Court of Appeals for the Ninth Circuit, dated November 10, 1949

Before Stephens and Healy, Circuit Judges, and Fee, District Judge.

JAMES ALGER FEE, District Judge:

This is a proceeding for a declaratory judgment, brought by Waialua Agricultural Company, Limited, a corporation, against Ciraco Maneja and forty-seven other persons as defendants, individually and as representative of all other employees of plaintiff who are similarly situated. Included also were Local 145-7 of the International Longshoremen's and Warehousemen's Union, and Jack Hall, Regional Director, Territory of Hawaii, of the International Longshoremen's and Warehousemen's Union, individually and "as representative of all employees of the plaintiff who are named herein as defendants and of all other employees of the plaintiff who are similarly situated."

The complaint sets up a general description of the operations of the plaintiff corporation and alleges that a collective bargaining agreement was entered into between plaintiff and defendant International Longshoremen's and Warehousemen's Union, Local 145-7. The complaint likewise sets up a detailed statement of the duties of each

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* The Findings of Fact and Conclusions of Law of the District Court are printed in the record used in the Court of Appeals, nine copies of which have been filed with the Clerk of this Court pursuant to Rule 21(4). See R. 190 *et seq.*, 308 *et seq.*

employee in somewhat vague terms. The prayer of the complaint is that the employee defendants named be declared employed in agriculture and, if not, each be declared to be engaged in the processing of sugar cane into sugar, and that certain of the employee defendants, while engaged in certain tasks in connection with the plantation villages, be declared not engaged in commerce or in the production of goods for commerce. The answer contains admissions and denials and prays a declaration that none of the employees and defendants are engaged in agriculture, and, while it is admitted that certain employees were engaged from time to time during certain work weeks in first processing, further prays the Court declare that none of them were engaged in processing as an adjunct to agriculture and that the Court declare all the employee defendants were engaged in commerce or in the production of goods for commerce, and that all of the employees were subject to the overtime provisions of the Fair Labor Standards Act and prays for an accounting.

There was then filed an elaborate stipulation which set up that competent witnesses would testify as to voluminous facts relating to the general situation. Part I of the stipulation, in paragraphs 1 to 37, inclusive, contains the agreement that the witnesses would testify to the organization of Waialua as a corporation and a detailed and meticulously precise statement of its operations and activities throughout the vast setup. Part II of the stipulation, under paragraphs 38 to 86, inclusive, contains the agreement that the witnesses would testify to a general description (not related by particular hours, weeks, months or years or to any particular calendar period) of the work performed by the forty-eight different employee defendants of the Plantation. Part III of the stipulation is

devoted to a limitation of the scope of the controversy and dispute and reads as follows:

> "It is Hereby Further Stipulated by and between the parties hereto as follows:
> "The controversy involved in the suit pursuant to which this stipulation is made and filed raises the question of whether the employees of the Plantation named as parties defendant herein and all other employees of the Plantation who are similarly situated are entitled to overtime compensation pursuant to the provisions of Section 7(a) of the Fair Labor Standards Act of 1938.
> "No controversy exists with respect to the application of the minimum wage provisions of the Fair Labor Standards Act of 1938 to the defendant employees herein or any other employees of the Plantation similarly situated as the lowest paid employee of the Plantation is paid at an hourly rate in excess of that required by the Fair Labor Standards Act of 1938.
> "The parties are agreed that any employee named herein as defendant who is held not to be subject to the Fair Labor Standards Act of 1938 or who is held to be exempt therefrom, and any other employee of the Plantation similarly situated is subject to the maximum hour provisions of the Hawaii Wage and Hour Law and must be paid at a rate of not less than one and one-half (1½) times the regular rate at which he is employed for all hours in excess of forty-eight (48) hours per week."

This stipulation was entered September 12, 1947.

So far as the record of the trial on September 18, 19, 22 and 23, 1947, was concerned, it appears the testimony consisted altogether of one witness for the defendants, who was the Regional Director for the Union, and one witness for the plaintiff, who was the Assistant Manager of the Plantation.

After the trial, the defendants filed an amended answer and cross-complaint November 3, 1947, wherein it was set up that the plaintiff had failed and refused since January

19, 1946, to compensate the defendants in accordance with the provisions of the Act. This was made an issue by the plaintiff in a reply to the cross-complaint, in which reliance was placed in part upon Section 10 of the Portal to Portal Act of 1947. However, pursuant to a joint motion for separate trial upon the issue raised by this portion of the defendants' amended answer and cross-complaint and plaintiff's answer and cross-complaint, the Court, by order dated March 22, 1948, granted the motion. This issue was never tried and is not here presented. We disregard this matter, for the Trial Court expressly directed entry of judgment upon the case presented by the original complaint and original answer according to the provisions of Rule 54(b), Rules of Civil Procedure. The cause must stand or fall on these alone.

The Court thereupon took these "issues" under advisement, and thereafter filed an opinion entitled in the record, "Findings with Conclusions," which appears in Waialua Agricultural Company, Limited, vs. Ciraco Maneja, et al, 77 F. Supp. 480. No findings of fact were made except as may appear therein. A judgment was then entered. This "judgment" does not relate to any of the individual defendants by name, but consists of a series of generalizations.

From this judgment, both sides appeal. Plaintiff attacks certain portions thereof. Defendants cross-appeal from other portions. Both appeals must be sustained. The "judgment" is a nullity. It gives no mandate or command as to the individual defendants named in the action. This document consists of a series of economic maxims which may or may not be applicable to the conditions and hours of work and overtime, if any, performed by Ciraco Maneja or Fumio Sunahara or Moses Fernandez or any other named individual defendant. It is true these expressions mention plaintiff and employees of plaintiff, as

may be noted. But there is no declaration of the rights of these defendants or any one of them either positively or negatively. There is not the positiveness of command or declaration required by a judgment.[1] The reason a judgment must be positive and founded upon fact is that it is to stand as res judicata between the parties and privies.[2] Unless the facts found as a basis for the judgment are definite and positive the ultimate characteristic of finality would be dissipated.

The second fatal defect in this pronouncement is that it lacks findings of fact. It is true, both parties refer to the "judgment" and opinion as though there were findings. But this mutual disregard of error which they had by one manner or another induced cannot avail to have this Court consider a judgment not founded in fact.[3] The Trial Court, in the opinion on file, indicated acceptance of the error superinduced by counsel and inherent in the inception of the case and in all the proceedings.

It is obvious no rule of conduct in respect to future activities and pay practices can be applied unless there are known and found as facts what work week, what employees, what activities and how connected with interstate commerce, agricultural or housing, through the particular employee. Otherwise, the process is not judicial but administrative or legislative. See Trans-Pacific Airlines, Ltd. vs. Hawaiian Airlines, Ltd., 9 Cir., 174 F.2d 63. The

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[1] Watts vs. Waddle, 6 Pet. 389, 399; Drybrough vs. Ware, 6 Cir., 111 F.2d 548, 551.

[2] "* * * an issue must have been decided before it can come within the scope of res judicata." Pierce vs. Kunkel, 5 Cir., 151 F.2d 897, 898; Brown vs. Fletcher, 6 Cir., 182 F. 963, 966-83; Hughes vs. United States, 71 U.S. 232, 237; A. O. Smith Corporation vs. Petroleum Iron Works, 73 F.2d 531, 537, where it is said a prior determination must be based on the merits.

[3] Kelley vs. Everglades Drainage District, 319 U.S. 415, 421.

absence of findings as to the particular employees named as defendants leaves no pediment on which a judgment can stand.[4] The Trial Court cites Tennessee Coal, Iron & Railroad Co., et al. vs. Muscoda Local No. 123, 321 U.S. 590, and Jewell Ridge Coal Corporation vs. Local 6167, 325 U.S. 161, as instances in which declaratory proceedings were carried to conclusion in interpretation of the Fair Labor Standards Act. But in each of these cases, detailed and specific findings were entered.[5]

The difficulties caused by lack of findings precise and definite may be indicated. First, although the parties stipulate that the gist of the controversy is whether the individual defendants are entitled to overtime compensation, there is no evidence, finding of fact, conclusion of law or declaration of the judgment that any one of the defendants named or any one similarly situated ever worked overtime for any period, definite or indefinite, and that any of them are asked or may be compelled to work overtime in the future or that either the employer or the employee contemplates such overtime work.

The result of lack of this essential finding is to render the cause moot in this Court, for it leaves the critical issue of the case here without allegation, proof, finding of fact or positive judgment. In the absence of such structure, the proceeding is coram non judice. There was not shown in the findings and judgment a "case or controversy"

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[4] Findings must be "sufficiently comprehensive and pertinent to the issues in the case so as to provide a basis for purposes of decision." Shapiro vs. Rubens, 7 Cir., 166 F.2d 659, 665; Schilling vs. Schwitzer-Cummins Co., U.S.Ct. of App., D.C., 142 F.2d 82, 84.

[5] See as to Jewell Ridge Coal Corporation vs. Local 6167, 53 F. Supp. 935, 937, 145 F.2d 10; as to Tennessee Coal, Iron & Railroad Co., et al. (directions for findings), 40 F.Supp. 4, 11, 135 F.2d 320, 322, 137 F.2d 176, 180, 321 U.S. 590, 603.

within the meaning of the Constitution.[6] If there were no basis for such a finding in the petition or evidence, the proceeding then must have been dismissed. For, failing this, there was no jurisdiction.[7] However, we need not determine whether the defect was fatal, since the cause must be remanded on account of the lack of essential findings.

The ultimate problem before the Court is the fitting of the provisions of a statute of national application to the activities of a particular employee in this giant agricultural operation. There are several phases of the fact picture on which the provisions of the Act might be pertinent:

(1) Farming operations, such as harvesting, to which Section 13(a)(6),[8] excluding from the operation of both wages and hours provisions of the Act "any employee engaged" in agriculture, as therein defined by Section 3(f),[9] might be applicable.

(2) Prevention of the spoilage of cane and preparation for delivery to market by processing to the point where raw (not refined) sugar is obtained, which might fall as work performed by a farmer on a farm in harvesting and preparing for market under section 3(f)[9] or might be excluded by Section 7(c)[10] as part of the processing of raw

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[6] Alabama State Federation of Labor vs. McAdory, 325 U.S. 450, 460-2. See Atwater vs. Freeman, 319 U.S. 359, 363; United States vs. West Virginia, 295 U.S. 463, 475; Aetna Life Insurance Co. vs. Haworth, 300 U.S. 227, 240.

[7] Colegrove vs. Green, 328 U.S. 549, 552; Ashwander vs. Tennessee Valley Authority, 297 U.S. 288, 325. Cf. Great Lakes Dredge & Dock Co. vs. Huffman, 319 U.S. 293, 300; Nashville, Chattanooga & Louis Railway Co. vs. Wallace, 288 U.S. 249, 262.

[8] 29 U.S.C.A. § 213.

[9] 29 U.S.C.A. § 203.

[10] 29 U.S.C.A. § 207.

sugar or might be considered in part as the production of goods for commerce.

(3) Construction, conservation, repair and reconditioning of plant, irrigation systems, tools, agricultural machines, processing plants, instruments of transportation, which might fall under Section 13(a)(6), Section 7(c) or Section 3(j).[11]

(4) Construction, management, repair, reconditioning and operation of villages, which may not be included under the Act at all, and may, on the other hand, fall in part or in whole under Section 13(a)(6), Section 7(c) or Section 3(j).

Inasmuch as it is apparent that the work of an employee defendant might fall under any one of these various and highly diverse classifications or might in a particular week comprise a combination of duties under two or all of these classes, the necessity for specific findings becomes more and more clear. Such findings must be in terms of the hours of each work week and the nature of the duty performed in order to fix the kaleidoscopic changes which vary the picture as often as the duties of a single employee shift under the light of the statutory provisions.

In certain fields, where the Trial Court drew general conclusions, we are unable to speak without such specific and positive findings. But it is not the function of an Appellate Court to make findings on its own account. Besides, other difficulties intervene. The stipulation is in the form of testimony and would require the judgment of the Trial Court to weigh the whole and select proper portions for incorporation into findings. It is true the attorneys requested more specific findings as to employees. The able and conscientious Trial Judge was unable to

[11] 29 U.S.C.A. § 203.

make such findings owing to the posture of the case and the state of the record—a matter which will be hereinafter discussed. This is pointed out in the opinion of the lower court on file herein.

It is a necessity, in view of the fact that a purported declaration has been entered below, that it be specifically indicated what findings would be requisite to support a judgment. Such analysis follows:

The statement that "practically every person employed in the work of a sugar plantation in Hawaii is employed in 'commerce' as it is defined and dealt with in the Fair Labor Standards Act," is a conclusion of law and not an applicable finding of fact.[12] The only method of making binding findings upon this subject is to enumerate the exact duties of a particular employee for a specified period of time and apply the pertinent statutory provisions. The imperative need for detailed facts upon which to found positive declarations is found in the nature and purpose of the act and the exclusions. The humanitarian purpose of the statute to insure to the industrial workers a fair wage for a reasonable work week was here crystallized, as the learned District Judge pointed out.

But the raising and harvesting of sugar were specifically given consideration by Congress on account of the immense importance to the economy of this country as a whole. The text of the Act itself, the debates over the meaning of provisions, and especially the broad phrasing of the exclusions, indicates the intention that construction should be evenly balanced and not technical. The text re-

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[12] Cf. Interstate Circuit Inc. vs. United States, 304 U.S. 55, 56. "The statements in the decree that in making the restrictive agreements the parties had engaged in an illegal conspiracy were but ultimate conclusions and did not dispense with the necessity of properly formulating the underlying findings of fact."

flects the feeling that, in troublesome times, the need for sugar may momentarily become vital. As to sugar, the all-year processing exclusion, in addition to the broad agriculturai exclusion, indicates strongly congressional intent. Not only was it the desire to exempt processing as a part of the harvesting done by a farmer or on a farm, but also processing done by a third party. These provisions are not alternative or mutually exclusive, and should be liberally construed for the reasons given by this Court in McComb vs. Hunt Foods, Inc., 9 Cir., 167 F.2d 905, 908. It must be remembered that the construction given to this Act by the Court as to Hawaii, although not conclusive, will be generally applied to wheat farms and sugar plantations in continental United States.

Agriculture and farming, as those terms are generally understood, are not interstate or foreign commerce. As has hitherto been pointed out by this Court in the case just cited above, these provisions relating to farming are exclusions, not technical exemptions to be construed in accordance with over-refined rules of pleading, but broadly and liberally as is demanded by the nature of the subject and the unquestionable intent of Congress. This factor is directly applicable to the individual employee because the Act specially provides that the statute shall not apply to any employee who is engaged in agriculture.

As a result of the basic inconsistency which has been pointed out before, vague phrases in the opinion of the District Court are particularly inept when relating to the activities of the employees concerned with the villages. It is probable it might be concluded, if a detailed finding of the work done by a particular employee in a particular week were made, that he had no connection with commerce or the production of goods for commerce, or it might be found that he was engaged in agriculture or processing of sugar cane. The wealth of detail which would have

been testified to by competent witnesses relating to the villages on the company property is such that it is extremely difficult to discover on what basis the Court believed many of these activities had any relation to interstate commerce.

Under the general conclusion that all employees of Waialua are engaged in commerce, the Trial Court necessarily holds that the carpenter who initially constructed a house for an army officer on company property and the beauty operator who works in a hotel for transients and the girl who takes tickets at the moving picture house are so engaged. If this be true, it would be stretching the bow very far. But we do not know that such employments exist, although "other employees similarly situated" might be construed to include such type work. But, in excepting to this conclusion contained in the opinion of the Trial Court, attorneys for appellant desire all employees blanketed under the agricultural exclusion, which, of course, would be just as improper. It is doubtful that many of these employees could be included in the agricultural exclusion. There may, on the other hand, be certain portions of such employment which would relate to retail or independent establishments under the statute, but the lack of findings hampers this Court to such an extent that we cannot deal with the situation. Scattered through the stipulation as to almost every one of the employees before the Court are statements to the effect that "he cuts firewood for use as fuel by plantation employees living in plantation villages." He "is engaged exclusively in cutting firewood for use as fuel by plantation employees living in plantation villages, repairing houses and pruning shade trees, etc." And again, "he may spend a day or two grading around * * * plantation housing areas preparatory to the construction of a new building or a house." Here a broad brush has been used, and there is no shading. If it were stated for what plantation employee the

firewood was cut, then there might be possibility of a definite conclusion, but we would have to know whether the firewood were a perquisite or whether it were paid in part as wages and whether it were a gift, dependent upon the relationship of the employee to the company.

The determination of how many angels could stand on the point of a needle would seem to have a firm foundation in fact, as compared with a determination of what relation the furnishing of firewood gratuitously to the village streetcleaner or tree trimmer around independent establishments of Waialua village has either to interstate commerce or to agriculture. But again, we do not know the facts. The finding in this regard might be based upon the evidence set up in the stipulation that some competent witness would testify to these facts:

> "Many non-plantation and independently owned and operated stores, shops, restaurants, service establishments and public schools and churches made their appearance on the plantation itself in and around the village of Waialua to serve the needs of plantation employees and their families living in the area."
> "The village of Haleiwa is a small business and residential community which is made up of privately owned residences and typical small retail and service establishments. Haleiwa caters to plantation employees and to surrounding community residents, who include persons working at other locations on the island of Oahu and residents of numerous beach houses and Army and Navy personnel using beach recreational facilities."
> "Employees of the plantation as heretofore are continuing to render services and perform maintenance work on plantation houses and village areas."

The difficulties of proceeding without a firm basis of fact are highlighted by a consideration of the transportation. The activities of employees engaged in transportation are various, according to crystalized testimony. Some work of this type might be classified as wholly agricul-

tural, such as transportation to market, within the statutory exclusion. Some might be viewed as processing, if that be not also agricultural, and a portion might be considered as unrelated to commerce or production of goods for commerce. It is probable that no feasible distinction can be drawn under the language of the statute between carriage by motor truck, railroad locomotives or other modern devices, and by water buffalo with carts, as the statutory cleavages are on other lines. For the same reason, distinctions cannot be drawn on account of size. If a particular operation in transportation were done, according to the facts, by a farmer in harvesting, it would not fall under the statutory provisions even if the farmer were an agricultural giant such as Waialua. If the particular hauling is not done by a farmer or "on a farm" "as an incident to or in conjunction with" farming operations, such as harvesting, then the subsidiary questions arise as to whether the haulage is connected with excluded processing or with the production of goods for commerce at all. The pushing of loaded sugar and molasses cars from plant to siding of a carrier might be delivery to a carrier for transportation to market or a part of a processing operation, according to the surrounding circumstances, such as, for instance, the time at which the raw sugar is sold. The qualification of transportation of men over roads outside the Plantation, the carriage of supplies for the farm or for individual storekeepers or for construction or for the electric plant depends on facts in minute detail. The placing of certain activities in transportation or in the category of "preparation for market" or "harvesting" on the one hand, or on the other in the category of "processing" of sugar cane into raw sugar, demands meticulous consideration.

The gathering of the cane and transporting it on the farm and reducing it to a product which can be handled without loss probably bears some analogies to other farm-

ing. In the old days of thrashing operations in wheat with stationary thrashers, the header cut the grain and it was carried by elevators into header boxes and by the header boxes carried to stacks. Thereafter the stationary thrasher would move from one stack to the other and thrash out the grain and place it in sacks. If the farmer owned his own outfit and farmed his own land, it was all a part of the harvesting operation up to the point where the grain was in the bag. The facts, if found as regards sugar cane, would settle the question as to whether the operations were outlined on stipulation as part of "harvesting."

If it be that, to prevent deterioration, there must be direct and immediate delivery from the harvest field to the cane-cleaning plant for cleaning preparatory to crushing, the hauling might be placed upon the same basis as the other processes which are necessary to prepare agricultural products to prevent deterioration. Again, the thrashing operation with wheat, which is only a first step, may furnish a guide. Everyone realizes that, in order to be used, the wheat must necessarily be elsewhere milled into flour. Likewise, everyone realizes that, before the sugar is usable, it must be refined at another factory. The process of harvesting cane might end only with the bagging of the raw sugar, as the harvesting of wheat ends with the bagging of the grain. The disposal of the molasses, which is an incidental product, may be similar to the disposal of the straw and chaff, which is an incidental product in the wheat harvesting process. The facts themselves, if found as to a particular employee, dictate the application of the statute.

The stipulated evidence would seem to indicate that sugar cane is highly perishable and starts to deteriorate immediately after cutting. The same source would indicate that, to avoid serious losses, it must be processed

into sugar, syrup or molasses within a few hours after it has been severed from the ground, and that for this reason and because of the great weight and bulkiness of cane as compared with raw sugar, it must be processed within a few miles of where it is grown. It was agreed also that sugar cane never moves into interstate commerce in its natural state. But these are not solidified into findings so that it can be determined whether the hauling of the cane is harvesting, an activity performed on a farm in preparing an agricultural commodity for delivery to market or to storage, or an essential processing operation without which this farm product would have been lost or wasted.

The question as to the classification of workers who have to do with irrigation has recently been dealt with by the Supreme Court of the United States in The Farmers Reservoir & Irrigation Co. vs. McComb, Adm., U.S.S.C., June 27, 1949. There it was held that an irrigation system common to a great many farms which hired its own employees was under the provisions of the Fair Labor Standards Act and was not covered under the agricultural exception. But the Court there pointed out that in the particular case there was not an operation by a farmer or on a farm, but that it was a communal enterprise by several farms. The explanation for this case is the same as that of Colaf vs. Gonzales, 1 Cir., 127 F.2d 934, Bowie vs. Gonzales, 1 Cir., 117 F. 2d 11, 123 F.2d 387, and the opinion of this Court in North Whittier Heights Citrus Assn. vs. National Labor Relations Board, 9 Cir., 109 F.2d 76. While it is probable The Farmers Reservoir opinion only highlights the exclusion of the worker who deals exclusively with irrigation on the farm of this single owner as one engaged in agriculture, the implications as to those who construct the canals and those who may work off the farm, if there be any, must be settled by reference to the actual facts.

It is impossible for this Court to rule in this state of the record and without findings as to specific employees, specific work, specific time and exact results on timekeepers, warehousemen, material clerks, laborers who load stones on conveyances in the fields and machinists at the mill, activities in construction and maintenance, employment, part or full time, in operation, maintenance and repair of equipment, burning of bagasse, generation and distribution of electricity, the cleaning and repairing of a mill or machinery and equipment, the hauling of supplies and equipment by motor truck and maintenance and repair thereof, the shoeing of horses and mules, maintenance and repair of buildings and grounds, and clerical employees. We believe many of these activities are shown by the testimony indicated in the stipulation to be excepted from the statute. But we cannot make findings of fact.[13]

Since the cause must be remanded then for exact findings, it will be pertinent for the District Court to determine whether there is a justiciable controversy, as above noticed, and also whether in any event a declaratory proceeding should be entertained. For the difficulty in crystalizing findings of fact did not arise from ineptness or recalcitrance of the learned Trial Judge, but from the course of the proceedings and the attitude of the real litigants.

The form of proceeding chosen by plaintiff was a declaratory judgment. This was unfortunate since generalities rather than concrete and exact definition of facts result from such a proceeding. Furthermore, since the proceeding is nebulous in form, the uncritical user may believe that any type relief can be obtained therein. But on top of the declaratory proceeding was superimposed the

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[13] Kelley vs. Everglades Drainage District, supra; Ford Motor Co. vs. National Labor Relations Board, 305 U.S. 364, 373.

joinder of and prayer for relief against all similarly situated. A blanket declaration of exclusion of all employees was sought. Then Waialua seemed to consider itself as representative of all its feudally organized brethren. Joined as defendants were the Union and its Regional Director, although no relief is sought against either. These latter appeared to have slight, if any, interest in the particular individual defendants, for they had in contemplation much broader issues. All the defendants, including these individual employees, appeared by the same counsel. But the moving actors were the Union and the director on one side and the "representative" Plantation on the other. The answer prayed likewise for a declaration in broad terms.

The record shows that none of the individual employees was called upon to testify in the case. No one of them was called to establish his work record in any particular week. Nor was any of them ever called to establish that he worked overtime. So far as the record indicates, no employee of the Plantation was ever in Court. Perhaps these minor characters could not be trusted in this litigation of the demigods. In any event, the major players seemed to have treated them as pawns.

The individual defendants and the duties of each are described in the stipulation, but with such broad strokes that individual characterization was obliterated and a composite portrait of some characteristics of an assumed worker achieved. The basis of findings of fact was here destroyed.

The record in the case consisted of the agreements of the stipulation, in which, undoubtedly, the Plantation and its operations and activities are described in great detail albeit it may be said with a very kind voice. There were injected into the record pamphlets entitled "Labor in the Territory of Hawaii" and "The Economy of Hawaii,

1947." The Regional Director of the Union testified he could not personally swear as to the operations at the installation of plaintiff, but that he had intimate knowledge of the condition on other plantations on the island and the character of the work done there. Notwithstanding he testified using the stipulation as a guide as to how various general functions of employees were performed throughout the Plantation on the island. An example of his method is contained in the following expression:

> "I must confess, your Honor, that this legal argument leaves me a little cold. I am trying to indicate in these job descriptions where they are incomplete and where they are misleading. And in the case of No. 42, Augustine Lorenzo, the description indicates that all of the water is used exclusively for irrigation purposes. Employees similarly situated on many of the plantations are handling water that is also used for mill purposes."

It is true the attorney for Waialua objected to this particular testimony, but he had already set the stage by the course of the proceeding up to that time. The net result was an attempt to lay foundations for an essay upon the economy of Hawaii or on labor conditions in Oahu. While the semi-feudal organization of industry and agriculture upon the plantations of this semi-dependent archipelago present a national problem, there should be no attempt to settle them on the basis of an agreed record between a single plantation and a labor organization.[14] Especially is this true where the rights of the individuals involved are utterly disregarded, notwithstanding the express lan-

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[14] The situation has not been aided on appeal so far as clarity is concerned by the intervention amici curiae of the Administrator of the Department of Labor, who takes a Janus-like position, and the American Farm Bureau Federation of the United States of America and American Sugar Cane League of the United States of America, Inc., since none of them discuss the matter on the record or with relation to the particular defendant employees.

guage of the statute. The danger is that, by agreeing as to this course of conduct, a precedent might be established for the settlement of problems on the mainland which does not have the peculiar problems of Hawaii.

The intention of the real litigants to make this a case upon which a general advisory opinion would be written appears in the discussions over the admissibility of certain testimony. The disregard of the employees themselves, who are the individuals whose interests are affected, is undisguised. The attorney for the Union says:

> "It isn't our purpose in this declaratory relief case to just get a determination for Waialua. That wouldn't solve anything. You'd have 30 odd other plantations that would still not have any authoritative statement as to where coverage lies and where it ends. The purpose of this proceeding was to get, first of all, a plantation which was sufficiently and substantially typical and representative, so that the decision in that case would apply to the rest of the industry. And that's why Waialua was picked out."

It will be noted then that this expression indicates that this action was brought by agreement between Waialua and the Union. The attempt was to dispose of it upon terms of agreement between these two and thereby compromise the rights and interests of hundreds of employees who would not themselves be permitted even to compromise their own coverage.[15]

The Trial Court should then consider as to whether there is any real adverse interest between the parties who are actually conducting the litigation.[16] For in the absence of real controversy between the actual parties, the stipulation, which practically dictates the judgment, ren-

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[15] D. A. Schulte, Inc. vs. Gangi, 328 U.S. 108, 116.

[16] United States, et al, vs. Johnson, 319 U.S. 302, 304; Coffman vs. Breeze Corporations, Inc., et al, 323 U.S. 316, 324-5.

ders the case moot.[17] The Court should consider that there is no power to render opinions merely advisory[18] or to decide moot questions[19] or to set precedent for future litigation.[20] It is of great importance that the rights of third parties might be prejudiced by a declaratory judgment in this case even if founded upon proper findings.[21]

Refusal to entertain a petition for declaratory judgment is peculiarly within the discretion of the Trial Court.[22] If a "concrete set of facts" would be supplied to which the statute could be fitted and thereby "an adequate and effective judgment" rendered,[23] it would be proper to proceed. For such a judgment would satisfy the necessity of firmly founded fact findings[24] and the elements requisite for a plea of res judicata[25] in subsequent litigation. It

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[17] Paradise Land & Livestock Co. vs. Federal Land Bank of Berkeley, 10 Cir., 147 F.2d 594; Buck's Stove & Range Company vs. American Federation of Labor, 219 U.S. 581; Dakota County vs. Glidden, 113 U.S. 222, 223-4.

[18] St. Pierre vs. United States, 319 U.S. 41, 42.

[19] United States and Interstate Commerce Commission vs. Alaska Steamship Company, 253 U.S. 113, 115.

[20] United States vs. Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft, 239 U.S. 466, 475-7.

[21] Lord vs. Veazie, 8 Howard 251, 255-6. See also Meeker vs. Straat, 38 Mo. App. 239, 243; Ward vs. Alsup, 100 Tenn. 619.

[22] Franklin Life Ins. Co. vs. Johnson, 10 Cir., 157 F.2d 653, 656.

[23] Alabama State Federation of Labor vs. McAdory, 325 U.S. 450, 468.

[24] Creamery Package Mfg. Co. vs. Cherry-Burrell Corporation, 3 Cir., 115 F.2d 980, 983, Cert. den. 312 U.S. 709; Interstate Circuit, Inc. vs. United States, 304 U.S. 55, 56.

[25] Pierce vs. Kunkel, 5 Cir., 151 F.2d 897, 898.

would remove the suspicion of an advisory opinion[26] dealing with "assumed potential invasions" of rights[27] and an academic pronouncement[28] instead of a definitive judgment. However, we leave this as a suggestion only and not as a direction.

Unfortunate as the consequences of remand may seem, it would be still more unfortunate for this Court to write a treatise without fact foundation. Other courts would then be required to guess similarly without foundation. The cause is therefore remanded for further proceedings in accordance with this opinion, either for dismissal for the reason that no ground has been shown for entry of a declaratory judgment or to permit the entry of detailed findings as to each employee defendant, based upon an adequate record. The judgment herein, which is in the form of a manifesto or at most of a legislative enactment or an administrative rule, is set aside.

Remanded for further proceedings.

(Endorsed:) Opinion. Filed Nov. 10, 1949. Paul P. O'Brien, Clerk.

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[26] This caution is heavily reinforced by the language and action of this Court in Imperial Irrigation District vs. Nevada-California Electric Corporation, 9 Cir., 111 F.2d 319, 321, 322. To like effect, Johnson vs. Interstate Transit Lines, 10 Cir., 163 F.2d 125, 130.

[27] Ashwander vs. Tennessee Valley Authority, 297 U.S. 288, 324; Arizona vs. California, 283 U.S. 423, 462.

[28] Johnson vs. Interstate Transit Lines, 10 Cir., 163 F.2d 125, 130.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1954

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Petitioner,

vs.

CHAGO MANEJA, et al.,
Respondents.

MEMORANDUM FOR RESPONDENTS.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1954

No. 358

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Petitioner,

vs.

CIRACO MANEJA, et al.,
Respondents.

MEMORANDUM FOR RESPONDENTS.

Petitioner is a corporation engaged in the production of sugar cane in Hawaii, its manufacture there into raw sugar, its transportation from there to the mainland where it is refined and marketed from a plant in California operated by a cooperative association consisting of petitioner and other Hawaiian sugar producers. Respondents are employees of petitioner.

The question presented is the applicability of the overtime pay provisions of the Fair Labor Standards Act of

1938 (52 Stat. 1060, 29 U.S.C. Sections 201, *et seq.*) to the work performed by respondents.

While petitioner's treatment of the matters embraced in "Opinions Below", "Jurisdiction", and "Statutory Provisions Involved" (pp. 1-3) is satisfactory, its handling of the "Statement of the Case" (p. 5) and "Questions Presented" (p. 2) is not. The difference between the parties on these two points is seen by a comparison of the petition filed in this case by the employer, with the one filed on the same day by the employees.

For the employees (respondents here) are themselves petitioners in *Maneja, et al. v. Waialua Agricultural Company, Limited*, No. 357, October Term, 1954, involving the same parties and being a petition for writ of certiorari to review the same judgment as is involved in this proceeding. In that case the employees, as petitioners, have stated their view of the questions presented by the judgment below and have set forth what they believe to be a correct statement of the case.

With respect to the statement of the case, the principal difference appears to be that here Waialua has limited its statement to a resume of the pleadings and proceedings both in the trial Court and in the Court of Appeals which led to the judgment now sought to be reviewed, whereas in No. 357 the employees have not only included such a resume, but have also set forth the record evidence dealing with the nature of Waialua's operations and of the work performed by the employees. This factual matter, which appears in the petition for the writ in No. 357, pages 7 to 10, should be considered by the Court to give meaning to the questions presented by the petition for the writ in this proceeding.

With respect to the questions presented, the contrast between the parties is again manifest by the different treatment of this topic in both petitions. In the petition in this case, Waialua suggests that the only questions presented are procedural ones, since, it is said, the Court of Appeals did not decide the case on the merits but directed a dismissal only because of its view that the action was "collusive". However, as shown by the petition in No. 357, the Court of Appeals did reach the merits, and actually decided, contrary to the decisions of this Court, of other Courts of Appeals, and of administrative agencies, that none of the employees involved was engaged in commerce or the production of goods for commerce, and also stated that the agriculture exemption deprived all such employees of the statutory right to overtime compensation.

Thus, while the employees do not object to their employer formulating the question it wishes to argue in any way it sees fit, they do assert that the issues framed by the employer are much too narrow and make it impossible for the employees to present to this Court the questions as they see them, based upon a full consideration of the record. This Court should also review the issues raised by the employees in No. 357. The writ may, of course, be issued in that case as well as here, in which event this problem will be solved. Another possible solution is to consolidate the two proceedings so that one writ may embrace the questions raised by both petitions.

It would be an idle gesture for this Court to follow Waialua's suggestion and to reverse the Court of Appeals "with directions to review on the merits the issues

of statutory construction which were presented by the parties and the record and were determined by the judgment of the District Court". (Petition for Writ of Certiorari, No. 358, p. 3.) For the Court of Appeals has already made such a determination on the merits with respect to both commerce coverage and the agriculture exemption. And it has made it in a way which is directly contrary to the decisions of this Court, of other Courts of Appeals, and of administrative agencies, all as demonstrated in the petition in No. 357.

The employees earnestly suggest that to issue the writ only in this case and not in No. 357 would have the effect of further prolonging this already extended litigation.

The entire case is ripe for adjudication: full and complete findings of fact were made in the District Court; the Court of Appeals reversed those findings upon grounds which are clearly erroneous; and no valid reason exists for determining the case on a piecemeal basis. This Court should take the entire controversy and determine it on the merits once and for all.

Dated, San Francisco, California,
October 18, 1954.

Respectfully submitted,

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